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|                                     |     |                          |
|-------------------------------------|-----|--------------------------|
| <b>FLOOR AMENDMENT STATEMENT:</b>   | No  |                          |
| <b>LEGISLATIVE FISCAL ESTIMATE:</b> | Yes | 12/16/2022<br>03/02/2023 |

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**REPORTS:** No

**HEARINGS:** No

**NEWSPAPER ARTICLES:** Yes

Kimberly Redmond, 'New law permits NJ cannabusinesses to claim state tax deductions', *NJBIZ* (online), 9 May 2023

Michael F. Schaff, “Cannabis Business Deductions Permitted at the New Jersey State Level”, *New Jersey Law Journal*, 30 May 2023

CL/JA

§§3,4  
C.54A:5-17  
and 54A:5-18  
§5  
Note

P.L. 2023, CHAPTER 50, *approved May 8, 2023*  
Assembly, No. 3946 (*Second Reprint*)

1 AN ACT concerning business deductions incurred in carrying on a  
2 cannabis business, amending P.L.1945, c.162 and P.L.1993,  
3 c.173, and supplementing Title 54A of the New Jersey Statutes.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 <sup>2</sup>[1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to  
9 read as follows:

10 4. For the purposes of this act, unless the context requires a  
11 different meaning:

12 (a) "Commissioner" or "director" shall mean the Director of the  
13 Division of Taxation of the State Department of the Treasury.

14 (b) "Allocation factor" shall mean the proportionate part of a  
15 taxpayer's net worth or entire net income used to determine a  
16 measure of its tax under this act.

17 (c) "Corporation" shall mean any corporation, joint-stock  
18 company or association and any business conducted by a trustee or  
19 trustees wherein interest or ownership is evidenced by a certificate  
20 of interest or ownership or similar written instrument, any other  
21 entity classified as a corporation for federal income tax purposes,  
22 and any state or federally chartered building and loan association or  
23 savings and loan association.

24 (d) "Net worth" shall mean the aggregate of the values disclosed  
25 by the books of the corporation for (1) issued and outstanding  
26 capital stock, (2) paid-in or capital surplus, (3) earned surplus and  
27 undivided profits, and (4) surplus reserves which can reasonably be  
28 expected to accrue to holders or owners of equitable shares, not  
29 including reasonable valuation reserves, such as reserves for  
30 depreciation or obsolescence or depletion. Notwithstanding the  
31 foregoing, net worth shall not include any deduction for the amount  
32 of the excess depreciation described in paragraph (2) (F) of  
33 subsection (k) of this section. The foregoing aggregate of values  
34 shall be reduced by 50% of the amount disclosed by the books of  
35 the corporation for investment in the capital stock of one or more  
36 subsidiaries, which investment is defined as ownership (1) of at  
37 least 80% of the total combined voting power of all classes of stock

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

<sup>1</sup>Assembly AOF committee amendments adopted September 29, 2022.

<sup>2</sup>Senate SBA committee amendments adopted January 19, 2023.

1 of the subsidiary entitled to vote and (2) of at least 80% of the total  
2 number of shares of all other classes of stock except nonvoting  
3 stock which is limited and preferred as to dividends. In the case of  
4 investment in an entity organized under the laws of a foreign  
5 country, the foregoing requisite degree of ownership shall effect a  
6 like reduction of such investment from the net worth of the  
7 taxpayer, if the foreign entity is considered a corporation for any  
8 purpose under the United States federal income tax laws, such as  
9 (but not by way of sole examples) for the purpose of supplying  
10 deemed paid foreign tax credits or for the purpose of status as a  
11 controlled foreign corporation. In calculating the net worth of a  
12 taxpayer entitled to reduction for investment in subsidiaries, the  
13 amount of liabilities of the taxpayer shall be reduced by such  
14 proportion of the liabilities as corresponds to the ratio which the  
15 excluded portion of the subsidiary values bears to the total assets of  
16 the taxpayer.

17 In the case of banking corporations which have international  
18 banking facilities as defined in subsection (n), the foregoing  
19 aggregate of values shall also be reduced by retained earnings of the  
20 international banking facility. Retained earnings means the  
21 earnings accumulated over the life of such facility and shall not  
22 include the distributive share of dividends paid and federal income  
23 taxes paid or payable during the tax year.

24 If in the opinion of the director, the corporation's books do not  
25 disclose fair valuations the director may make a reasonable  
26 determination of the net worth which, in his opinion, would reflect  
27 the fair value of the assets, exclusive of subsidiary investments as  
28 defined aforesaid, carried on the books of the corporation, in  
29 accordance with sound accounting principles, and such  
30 determination shall be used as net worth for the purpose of this act.

31 (e) (Deleted by amendment, P.L.1998, c.114.)

32 (f) "Investment company" shall mean any corporation whose  
33 business during the period covered by its report consisted, to the  
34 extent of at least 90% thereof of holding, investing and reinvesting  
35 in stocks, bonds, notes, mortgages, debentures, patents, patent rights  
36 and other securities for its own account, but this shall not include  
37 any corporation which: (1) is a merchant or a dealer of stocks,  
38 bonds and other securities, regularly engaged in buying the same  
39 and selling the same to customers; or (2) had less than 90% of its  
40 average gross assets in New Jersey, at cost, invested in stocks,  
41 bonds, debentures, mortgages, notes, patents, patent rights or other  
42 securities or consisting of cash on deposit during the period covered  
43 by its report; or (3) is a banking corporation, a savings institution,  
44 or a financial business corporation as defined in the Corporation  
45 Business Tax Act.

46 (g) "Regulated investment company" shall mean any corporation  
47 which for a period covered by its report, is registered and regulated

1 under the Investment Company Act of 1940 (54 Stat. 789), as  
2 amended.

3 (h) "Taxpayer" shall mean any corporation, any combined group  
4 filing a mandatory or elective New Jersey combined return, and any  
5 partnership required, or consenting, to report or to pay taxes,  
6 interest or penalties under this act. "Taxpayer" shall not include a  
7 partnership that is listed on a United States national stock exchange.

8 (i) "Fiscal year" shall mean an accounting period ending on any  
9 day other than the last day of December on the basis of which the  
10 taxpayer is required to report for federal income tax purposes.

11 (j) Except as herein provided, "privilege period" shall mean the  
12 calendar or fiscal accounting period for which a tax is payable  
13 under this act.

14 (k) "Entire net income" shall mean total net income from all  
15 sources, whether within or without the United States, and shall  
16 include the gain derived from the employment of capital or labor, or  
17 from both combined, as well as profit gained through a sale or  
18 conversion of capital assets.

19 For the purpose of this act, the amount of a taxpayer's entire net  
20 income shall be deemed prima facie to be equal in amount to the  
21 taxable income, before net operating loss deduction and special  
22 deductions, which the taxpayer is required to report, or, if the  
23 taxpayer is classified as a partnership for federal tax purposes,  
24 would otherwise be required to report, to the United States Treasury  
25 Department for the purpose of computing its federal income tax,  
26 provided however, that in the determination of such entire net  
27 income,

28 (1) Entire net income shall exclude for the periods set forth in  
29 paragraph (2)(F)(i) of this subsection, any amount, except with  
30 respect to qualified mass commuting vehicles as described in  
31 section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect  
32 immediately prior to January 1, 1984, which is included in a  
33 taxpayer's federal taxable income solely as a result of an election  
34 made pursuant to the provisions of paragraph (8) of that section.

35 (2) Entire net income shall be determined without the exclusion,  
36 deduction or credit of:

37 (A) The amount of any exemption or credit allowed in any law  
38 of the United States imposing any tax on or measured by the income  
39 of corporations.

40 (B) Any part of any income from dividends or interest on any  
41 kind of stock, securities or indebtedness, except as provided in  
42 paragraph (5) of subsection (k) of this section.

43 (C) Taxes paid or accrued to the United States, a possession or  
44 territory of the United States, a state, a political subdivision thereof,  
45 or the District of Columbia, or to any foreign country, state,  
46 province, territory or subdivision thereof, on or measured by profits  
47 or income, or business presence or business activity, or the tax  
48 imposed by this act, or any tax paid or accrued with respect to

1 subsidiary dividends excluded from entire net income as provided  
2 in paragraph (5) of subsection (k) of this section.

3 (D) (Deleted by amendment, P.L.1985, c.143.)

4 (E) (Deleted by amendment, P.L.1995, c.418.)

5 (F) (i) The amount by which depreciation reported to the United  
6 States Treasury Department for property placed in service on and  
7 after January 1, 1981, but prior to taxpayer fiscal or calendar  
8 accounting years beginning on and after the effective date of  
9 P.L.1993, c.172, for purposes of computing federal taxable income  
10 in accordance with section 168 of the Internal Revenue Code in  
11 effect after December 31, 1980, exceeds the amount of depreciation  
12 determined in accordance with the Internal Revenue Code  
13 provisions in effect prior to January 1, 1981, but only with respect  
14 to a taxpayer's accounting period ending after December 31, 1981;  
15 provided, however, that where a taxpayer's accounting period  
16 begins in 1981 and ends in 1982, no modification shall be required  
17 with respect to this paragraph (F) for the report filed for such period  
18 with respect to property placed in service during that part of the  
19 accounting period which occurs in 1981. The provisions of this  
20 subparagraph shall not apply to assets placed in service prior to  
21 January 1, 1998 of a gas, gas and electric, and electric public utility  
22 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
23 seq.) prior to 1998.

24 (ii) For the periods set forth in subparagraph (F)(i) of paragraph  
25 (2) of this subsection, any amount, except with respect to qualified  
26 mass commuting vehicles as described in section 168(f)(8)(D)(v) of  
27 the Internal Revenue Code as in effect immediately prior to January  
28 1, 1984, which the taxpayer claimed as a deduction in computing  
29 federal income tax pursuant to a qualified lease agreement under  
30 paragraph (8) of that section.

31 The director shall promulgate rules and regulations necessary to  
32 carry out the provisions of this section, which rules shall provide,  
33 among others, the manner in which the remaining life of property  
34 shall be reported.

35 (G) (i) The amount of any civil, civil administrative, or criminal  
36 penalty or fine, including a penalty or fine under an administrative  
37 consent order, assessed and collected for a violation of a State or  
38 federal environmental law, an administrative consent order, or an  
39 environmental ordinance or resolution of a local governmental  
40 entity, and any interest earned on the penalty or fine, and any  
41 economic benefits having accrued to the violator as a result of a  
42 violation, which benefits are assessed and recovered in a civil, civil  
43 administrative, or criminal action, or pursuant to an administrative  
44 consent order. The provisions of this paragraph shall not apply to a  
45 penalty or fine assessed or collected for a violation of a State or  
46 federal environmental law, or local environmental ordinance or  
47 resolution, if the penalty or fine was for a violation that resulted  
48 from fire, riot, sabotage, flood, storm event, natural cause, or other

1 act of God beyond the reasonable control of the violator, or caused  
2 by an act or omission of a person who was outside the reasonable  
3 control of the violator.

4 (ii) The amount of treble damages paid to the Department of  
5 Environmental Protection pursuant to subsection a. of section 7 of  
6 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
7 department in removing, or arranging for the removal of, an  
8 unauthorized discharge upon failure of the discharger to comply  
9 with a directive from the department to remove, or arrange for the  
10 removal of, the discharge.

11 (H) The amount of any sales and use tax paid by a utility vendor  
12 pursuant to section 71 of P.L.1997, c.162.

13 (I) Interest paid, accrued or incurred for the privilege period to  
14 a related member, as defined in section 5 of P.L.2002, c.40  
15 (C.54:10A-4.4), except that a deduction shall be permitted to the  
16 extent that the taxpayer establishes by clear and convincing  
17 evidence, as determined by the director, that: (i) a principal purpose  
18 of the transaction giving rise to the payment of the interest was not  
19 to avoid taxes otherwise due under Title 54 of the Revised Statutes  
20 or Title 54A of the New Jersey Statutes, (ii) the interest is paid  
21 pursuant to arm's length contracts at an arm's length rate of interest,  
22 and (iii)(aa) the related member was subject to a tax on its net  
23 income or receipts in this State or another state or possession of the  
24 United States or in a foreign nation, (bb) a measure of the tax  
25 includes the interest received from the related member, and (cc) the  
26 rate of tax applied to the interest received by the related member is  
27 equal to or greater than a rate three percentage points less than the  
28 rate of tax applied to taxable interest by this State pursuant to  
29 section 5 of P.L.1945, c.162 (C.54:10A-5).

30 A deduction shall also be permitted if the taxpayer establishes by  
31 clear and convincing evidence, as determined by the director, that  
32 the disallowance of a deduction is unreasonable, or the taxpayer and  
33 the director agree in writing to the application or use of an  
34 alternative method of apportionment under section 8 of P.L.1945,  
35 c.162 (C.54:10A-8); nothing in this subsection shall be construed to  
36 limit or negate the director's authority to otherwise enter into  
37 agreements and compromises otherwise allowed by law.

38 A deduction shall also be permitted to the extent that the  
39 taxpayer establishes by a preponderance of the evidence, as  
40 determined by the director, that the interest is directly or indirectly  
41 paid, accrued or incurred to (i) a related member in a foreign nation  
42 which has in force a comprehensive income tax treaty with the  
43 United States and the related member (aa) was subject to tax in the  
44 foreign nation on a tax base that included the payment paid,  
45 accrued, or incurred; and (bb) under which the related member's  
46 income received from the transaction was taxed at an effective tax  
47 rate equal to or greater than a rate of three percentage points less  
48 than the rate of tax applied to taxable interest by the State of New

1 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),  
2 provided however that the taxpayer shall disclose on its return for  
3 the privilege period the name of the related member, the amount of  
4 the interest, the relevant foreign nation, and such other information  
5 as the director may prescribe or (ii) to an independent lender and  
6 the taxpayer guarantees the debt on which the interest is required.  
7 The adjustments required by this subparagraph shall not apply to  
8 transactions between related members included in a combined  
9 group reported on a New Jersey combined return.

10 (J) (i) Amounts deducted for federal tax purposes pursuant to  
11 section 199 of the federal Internal Revenue Code of 1986, 26  
12 U.S.C. s.199, except that this exclusion shall not apply to amounts  
13 deducted pursuant to that section that are exclusively based upon  
14 domestic production gross receipts of the taxpayer which are  
15 derived only from any lease, rental, license, sale, exchange, or other  
16 disposition of qualifying production property which the taxpayer  
17 demonstrates to the satisfaction of the director was manufactured or  
18 produced by the taxpayer in whole or in significant part within the  
19 United States but not qualified production property that was grown  
20 or extracted by the taxpayer. "Manufactured or produced" as used  
21 in this paragraph shall be limited to performance of an operation or  
22 series of operations the object of which is to place items of tangible  
23 personal property in a form, composition, or character different  
24 from that in which they were acquired. The change in form,  
25 composition, or character shall be a substantial change, and result in  
26 a transformation of property into a different or substantially more  
27 usable product.

28 (ii) For privilege periods beginning after December 31, 2017,  
29 notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-1 et  
30 seq.) or any other law to the contrary, for the purposes of  
31 determining the amount of income pursuant to P.L.1945, c.162  
32 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be  
33 taken as a deduction pursuant to section 199A of the Internal  
34 Revenue Code (26 U.S.C. s.199A).

35 (K) For privilege periods beginning after December 31, 2017,  
36 the interest deduction limitation in subsection (j) of section 163 of  
37 the Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-  
38 rata basis to interest paid to both related and unrelated parties,  
39 regardless of whether the related parties are subject to the add-back  
40 provision of either subparagraph (I) of paragraph (2) of this  
41 subsection or in section 5 of P.L.2002, c.40 (C.54:10A-4.4).

42 (3) The director may, whenever necessary to properly reflect the  
43 entire net income of any taxpayer, determine the year or period in  
44 which any item of income or deduction shall be included, without  
45 being limited to the method of accounting employed by the  
46 taxpayer.

47 (4) There shall be allowed as a deduction from entire net income  
48 of a banking corporation, to the extent not deductible in

1 determining federal taxable income, the eligible net income of an  
2 international banking facility determined as follows:

3 (A) The eligible net income of an international banking facility  
4 shall be the amount remaining after subtracting from the eligible  
5 gross income the applicable expenses;

6 (B) Eligible gross income shall be the gross income derived by  
7 an international banking facility, which shall include, but not be  
8 limited to, gross income derived from:

9 (i) Making, arranging for, placing or carrying loans to foreign  
10 persons, provided, however, that in the case of a foreign person  
11 which is an individual, or which is a foreign branch of a domestic  
12 corporation (other than a bank), or which is a foreign corporation or  
13 foreign partnership which is controlled by one or more domestic  
14 corporations (other than banks), domestic partnerships or resident  
15 individuals, all the proceeds of the loan are for use outside of the  
16 United States;

17 (ii) Making or placing deposits with foreign persons which are  
18 banks or foreign branches of banks (including foreign subsidiaries)  
19 or foreign branches of the taxpayers or with other international  
20 banking facilities;

21 (iii) Entering into foreign exchange trading or hedging  
22 transactions related to any of the transactions described in this  
23 paragraph; or

24 (iv) Such other activities as an international banking facility  
25 may, from time to time, be authorized to engage in;

26 (C) Applicable expenses shall be any expense or other  
27 deductions attributable, directly or indirectly, to the eligible gross  
28 income described in subparagraph (B) of this paragraph.

29 (5) (A) (i) Entire net income shall exclude 100% of dividends  
30 which were included in computing such taxable income for federal  
31 income tax purposes, paid to the taxpayer by one or more  
32 subsidiaries owned by the taxpayer to the extent of the 80% or more  
33 ownership of investment described in subsection (d) of this section  
34 for privilege periods beginning on or before December 31, 2016.

35 (ii) For privilege periods beginning after December 31, 2016  
36 and before January 1, 2019, entire net income shall exclude 95% of  
37 dividends which were included in computing such taxable income  
38 for federal income tax purposes, paid or deemed paid, to the  
39 taxpayer by one or more subsidiaries owned by the taxpayer to the  
40 extent of the 80% or more ownership of investment described in  
41 subsection (d) of this section. For the purposes of calculating the  
42 tax liability owed for the paid or deemed paid dividends included in  
43 entire net income by this subsubparagraph (ii), the taxpayer shall  
44 use either their three-year average allocation factor for the  
45 taxpayer's 2014 through 2016 tax years reported on the taxpayer's  
46 tax returns or 3.5 percent, whichever is lower.

47 (iii) For privilege periods beginning on and after January 1,  
48 2019, entire net income shall exclude 95% of dividends which were

1 included in computing such taxable income for federal income tax  
2 purposes, paid or deemed paid to the taxpayer by one or more  
3 subsidiaries owned by the taxpayer to the extent of the 80% or more  
4 ownership of investment described in subsection (d) of this section.

5 (B) Entire net income shall exclude 50% of dividends which  
6 were included in computing such taxable income for federal income  
7 tax purposes, paid or deemed paid to the taxpayer by one or more  
8 subsidiaries owned by the taxpayer to the extent of 50% or more  
9 ownership of investment, such ownership of investment calculated  
10 in the same manner as the 80% or more of ownership of investment  
11 is calculated as described in subsection (d) of this section.

12 (C) To the extent a subsidiary received dividends from other  
13 subsidiaries and included those dividends in its entire net income  
14 for the purposes of determining its tax liability pursuant to section 5  
15 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,  
16 the taxpayer receiving those same dividends from the subsidiary  
17 shall exclude those dividends from its entire net income based on  
18 the subsidiary's allocation factor used by the subsidiary in  
19 determining its tax liability pursuant to section 5 of P.L.1945, c.162  
20 (C.54:10A-5). This subparagraph (C) shall not apply to privilege  
21 periods ending on and after July 31, 2019.

22 (D) For privilege periods ending on and after July 31, 2019 but  
23 before July 31, 2020, to the extent a subsidiary received dividends  
24 from other subsidiaries and included those dividends in its entire net  
25 income for the purposes of determining its tax liability pursuant to  
26 section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those  
27 dividends, the taxpayer receiving those same dividends from the  
28 subsidiary shall exclude those dividends from its entire net income.

29 (E) For privilege periods ending on and after July 31, 2020, for  
30 purposes of this paragraph (5), the members of a combined group  
31 filing a New Jersey combined return shall be treated as one taxpayer  
32 with regard to dividends and deemed dividends that were received  
33 as part of the unitary business of the combined group.

34 (6) (A) Net operating loss deduction. For privilege periods  
35 ending before July 31, 2019, there shall be allowed as a deduction  
36 for the privilege period the net operating loss carryover to that  
37 period.

38 (B) Net operating loss carryover. A net operating loss for any  
39 privilege period ending after June 30, 1984 shall be a net operating  
40 loss carryover to each of the seven privilege periods following the  
41 period of the loss and a net operating loss for any privilege period  
42 ending after June 30, 2009 shall be a net operating loss carryover to  
43 each of the twenty privilege periods following the period of the  
44 loss. The entire amount of the net operating loss for any privilege  
45 period (the "loss period") shall be carried to the earliest of the  
46 privilege periods to which the loss may be carried. The portion of  
47 the loss which shall be carried to each of the other privilege periods  
48 shall be the excess, if any, of the amount of the loss over the sum of

1 the entire net income, computed without the exclusions permitted in  
2 paragraphs (4) and (5) of this subsection or the net operating loss  
3 deduction provided by subparagraph (A) of this paragraph, for each  
4 of the prior privilege periods to which the loss may be carried.

5 (C) Net operating loss. For purposes of this paragraph the term  
6 "net operating loss" means the excess of the deductions over the  
7 gross income used in computing entire net income without the net  
8 operating loss deduction provided for in subparagraph (A) of this  
9 paragraph and the exclusions in paragraphs (4) and (5) of this  
10 subsection.

11 (D) Change in ownership. Where there is a change in 50% or  
12 more of the ownership of a corporation because of redemption or  
13 sale of stock and the corporation changes the trade or business  
14 giving rise to the loss, no net operating loss sustained before the  
15 changes may be carried over to be deducted from income earned  
16 after such changes. In addition where the facts support the premise  
17 that the corporation was acquired under any circumstances for the  
18 primary purpose of the use of its net operating loss carryover, the  
19 director may disallow the carryover.

20 (E) Notwithstanding the provisions of this paragraph (6) of  
21 subsection (k) of this section to the contrary, for privilege periods  
22 beginning during calendar year 2002 and calendar year 2003, no  
23 deduction for any net operating loss carryover shall be allowed and  
24 for privilege periods beginning during calendar year 2004 and  
25 calendar year 2005, there shall be allowed as a deduction for the  
26 privilege period so much of the net operating loss carryover as  
27 reduces entire net income otherwise calculated by 50%. If and only  
28 to the extent that any net operating loss carryover deduction is  
29 disallowed by reason of this subparagraph (E), the date on which  
30 the amount of the disallowed net operating loss carryover deduction  
31 would otherwise expire shall be extended by a period equal to the  
32 period for which application of the net operating loss was  
33 disallowed by this subparagraph.

34 Provided, that this subparagraph (E) shall not restrict the  
35 surrender or acquisition of corporation business tax benefit  
36 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-  
37 7.42a) and shall not restrict the application of corporation business  
38 tax benefit certificates pursuant to section 2 of P.L.1997, c.334  
39 (C.54:10A-4.2).

40 (F) Reduction for discharge of indebtedness. A net operating  
41 loss for any privilege period ending after June 30, 2014, and any net  
42 operating loss carryover to such privilege period, shall be reduced  
43 by the amount excluded from federal taxable income under  
44 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of  
45 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),  
46 for the privilege period of the discharge of indebtedness.

47 (7) The entire net income of gas, electric and gas and electric  
48 public utilities that were subject to, or would have been subject to

1 tax if doing business in this State, the provisions of P.L.1940, c.5  
2 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by  
3 substituting the New Jersey depreciation allowance for federal tax  
4 depreciation with respect to assets placed in service prior to January  
5 1, 1998. For gas, electric, and gas and electric public utilities that  
6 were subject to, or would have been subject to tax if doing business  
7 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)  
8 prior to 1998, the New Jersey depreciation allowance shall be  
9 computed as follows: All depreciable assets placed in service prior  
10 to January 1, 1998 shall be considered a single asset account. The  
11 New Jersey tax basis of this depreciable asset account shall be an  
12 amount equal to the carryover adjusted basis for federal income tax  
13 purposes on December 31, 1997 of all depreciable assets in service  
14 on December 31, 1997, increased by the excess, of the "net carrying  
15 value," defined to be adjusted book basis of all assets and liabilities,  
16 excluding deferred income taxes, recorded on the public utility's  
17 books of account on December 31, 1997, over the carryover  
18 adjusted basis for federal income tax purposes on December 31,  
19 1997 of all assets and liabilities owned by the gas, electric, or gas  
20 and electric public utility as of December 31, 1997. "Books of  
21 account" for gas, gas and electric, and electric public utilities means  
22 the uniform system of accounts as promulgated by the Federal  
23 Energy Regulatory Commission and adopted by the Board of Public  
24 Utilities. The following adjustments to entire net income shall be  
25 made pursuant to this section:

26 (A) Depreciation for property placed in service prior to January  
27 1, 1998 shall be adjusted as follows:

28 (i) Depreciation for federal income tax purposes shall be  
29 disallowed in full.

30 (ii) A deduction shall be allowed for the New Jersey  
31 depreciation allowance. The New Jersey depreciation allowance  
32 shall be computed for the single asset account described above  
33 based on the New Jersey tax basis as adjusted above as if all assets  
34 in the single asset account were first placed in service on January 1,  
35 1998. Depreciation shall be computed using the straight line method  
36 over a thirty-year life. A full year's depreciation shall be allowed in  
37 the initial tax year. No half-year convention shall apply. The  
38 depreciable basis of the single account shall be reduced by the  
39 adjusted federal tax basis of assets sold, retired, or otherwise  
40 disposed of during any year on which gain or loss is recognized for  
41 federal income tax purposes as described in subparagraph (B) of  
42 this paragraph.

43 (B) Gains and losses on sales, retirements and other dispositions  
44 of assets placed in service prior to January 1, 1998 shall be  
45 recognized and reported on the same basis as for federal income tax  
46 purposes.

47 (C) The Director of the Division of Taxation shall promulgate  
48 regulations describing the methodology for allocating the single

1 asset account in the event that a portion of the utility's operations  
2 are separated, spun-off, transferred to a separate company or  
3 otherwise desegregated.

4 (8) In the case of taxpayers that are gas, electric, gas and  
5 electric, or telecommunications public utilities as defined pursuant  
6 to subsection (q) of this section, the director shall have authority to  
7 promulgate rules and issue guidance correcting distortions and  
8 adjusting timing differences resulting from the adoption of  
9 P.L.1997, c.162 (C.54:10A-5.25 et al.).

10 (9) Notwithstanding paragraph (1) of this subsection, entire net  
11 income shall not include the income derived by a corporation  
12 organized in a foreign country from the international operation of a  
13 ship or ships, or from the international operation of aircraft, if such  
14 income is exempt from federal taxation pursuant to section 883 of  
15 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

16 (10) Entire net income shall exclude all income of an alien  
17 corporation the activities of which are limited in this State to  
18 investing or trading in stocks and securities for its own account,  
19 investing or trading in commodities for its own account, or any  
20 combination of those activities, within the meaning of section 864  
21 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in  
22 effect on December 31, 1998. Notwithstanding the previous  
23 sentence, if an alien corporation undertakes one or more infrequent,  
24 extraordinary or non-recurring activities, including but not limited  
25 to the sale of tangible property, only the income from such  
26 infrequent, extraordinary or non-recurring activity shall be subject  
27 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et  
28 seq.), and that amount of income subject to tax shall be determined  
29 without regard to the allocation to that specific transaction of any  
30 general business expense of the taxpayer and shall be specifically  
31 assigned to this State for taxation by this State without regard to  
32 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this  
33 paragraph, "alien corporation" means a corporation organized under  
34 the laws of a jurisdiction other than the United States or its political  
35 subdivisions.

36 (11) No deduction shall be allowed for research and  
37 experimental expenditures, to the extent that those research and  
38 experimental expenditures are qualified research expenses or basic  
39 research payments for which an amount of credit is claimed  
40 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless  
41 those research and experimental expenditures are also used to  
42 compute a federal credit claimed pursuant to section 41 of the  
43 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

44 (12) (A) Notwithstanding the provisions of subsection (k) of  
45 section 168 of the federal Internal Revenue Code of 1986, 26  
46 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal  
47 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal  
48 law, for property acquired after September 10, 2001, the

1 depreciation deduction otherwise allowed pursuant to section 167 of  
2 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall  
3 be determined pursuant to the provisions of the federal Internal  
4 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on  
5 December 31, 2001.

6 (B) The director shall prescribe the rules and regulations  
7 necessary to carry out the provisions of this paragraph, including,  
8 among others, those for determining the adjusted basis of the  
9 acquired property for the purposes of the Corporation Business Tax  
10 Act (1945), P.L.1945, c.162.

11 (13) (A) Notwithstanding the provisions of section 179 of the  
12 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for  
13 property placed in service on or after January 1, 2004, the costs that  
14 a taxpayer may otherwise elect to treat as an expense which is not  
15 chargeable to a capital account shall be determined pursuant to the  
16 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.  
17 s.1 et seq.) in effect on December 31, 2002.

18 (B) The director shall prescribe the rules and regulations  
19 necessary to carry out the provisions of this paragraph, including,  
20 among others, those for determining the adjusted basis of the  
21 acquired property for the purposes of the Corporation Business Tax  
22 Act (1945), P.L.1945, c.162.

23 (14) Notwithstanding the provisions of subsection (i) of section  
24 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),  
25 for privilege periods beginning after December 31, 2008 and before  
26 January 1, 2011, entire net income shall include the amount of  
27 discharge of indebtedness income excluded for federal income tax  
28 purposes pursuant to subsection (i) of section 108 of the federal  
29 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege  
30 periods beginning on or after January 1, 2014 and before January 1,  
31 2019, entire net income shall exclude the amount of discharge of  
32 indebtedness income included for federal income tax purposes,  
33 pursuant to subsection (i) of section 108 of the federal Internal  
34 Revenue Code of 1986 (26 U.S.C. s.108).

35 (15) Entire net income shall exclude the gain or income derived  
36 from the sale or assignment of a tax credit transfer certificate  
37 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section  
38 10 of P.L.2014, c.63 (C.34:1B-251).

39 (16) (A) There shall be allowed as a deduction an amount  
40 computed in accordance with this paragraph.

41 (B) For purposes of this paragraph, "net deferred tax liability"  
42 means deferred tax liabilities that exceed the deferred tax assets of  
43 the combined group, as computed in accordance with generally  
44 accepted accounting principles, and "net deferred tax asset" means  
45 that deferred tax assets exceed the deferred tax liabilities of the  
46 combined group, as computed in accordance with generally  
47 accepted accounting principles.

1 (C) Only publicly traded companies, including affiliated  
2 corporations participating in the filing of a publicly traded  
3 company's financial statements prepared in accordance with  
4 generally accepted accounting principles, as of the effective date of  
5 this paragraph, shall be eligible for this deduction.

6 (D) If the provisions of sections 18 through 23 of P.L.2018, c.48  
7 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to  
8 the members' net deferred tax liability or an aggregate decrease to  
9 the members' net deferred tax asset, or an aggregate change from a  
10 net deferred tax asset to a net deferred tax liability, the combined  
11 group shall be entitled to a deduction, as determined in this  
12 paragraph.

13 (E) For 10 years beginning with the combined group's first  
14 privilege period beginning on or after January 1 of the fifth year  
15 after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a  
16 combined group shall be entitled to a deduction from combined  
17 group entire net income equal to one-tenth of the amount necessary  
18 to offset the increase in the net deferred tax liability or decrease in  
19 the net deferred tax asset, or aggregate change from a net deferred  
20 tax asset to a net deferred tax liability. Such increase in the net  
21 deferred tax liability or decrease in the net deferred tax asset or the  
22 aggregate change from a net deferred tax asset to a net deferred tax  
23 liability shall be computed based on the change that would result  
24 from the imposition of the unitary reporting requirements under  
25 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and  
26 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided  
27 under this paragraph as of the effective date of this paragraph.

28 (F) The deferred tax impact determined in subparagraph (E) of  
29 this paragraph must be converted to the annual Deferred Tax  
30 Deduction amount, as follows:

31 (i) the deferred tax impact determined in subparagraph (E) of  
32 this paragraph shall be divided by the rate determined under section  
33 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,  
34 c.48 (C.54:10A-5.41 et al.);

35 (ii) the resulting amount shall be further divided by the New  
36 Jersey unitary business allocation factor that was used by the  
37 combined group in the calculation of the deferred tax assets and  
38 deferred tax liabilities as described in subparagraph (E) of this  
39 paragraph;

40 (iii) the resulting amount represents the total net Deferred Tax  
41 Deduction available over the ten-year period as described in  
42 subparagraph (E) of this paragraph.

43 (G) The deduction calculated under this paragraph shall not be  
44 adjusted as a result of any events happening subsequent to such  
45 calculation, including, but not limited to, any disposition or  
46 abandonment of assets. Such deduction shall be calculated without  
47 regard to the federal tax effect and shall not alter the tax basis of  
48 any asset. If the deduction under this section is greater than

1 combined group entire net income, any excess deduction shall be  
2 carried forward and applied as a deduction to combined group entire  
3 net income in future privilege periods until fully utilized.

4 (H) Any combined group intending to claim a deduction under  
5 this paragraph shall file a statement with the director on or before  
6 July 1 of the year subsequent to the first privilege period for which  
7 a combined return is required. Such statement shall specify the  
8 total amount of the deduction which the combined group claims on  
9 such form and in such manner as prescribed by the director. No  
10 deduction shall be allowed under this paragraph for any privilege  
11 period except to the extent claimed on such timely filed statement  
12 in accordance with this paragraph.

13 (17) (A) In the case of a taxpayer that is a cannabis licensee,  
14 there shall be allowed as a deduction an amount equal to any  
15 expenditure that is eligible to be claimed as a federal income tax  
16 deduction but is disallowed because cannabis is a controlled  
17 substance under federal law.

18 (B) <sup>1</sup>Subparagraph (A) of this paragraph shall only apply to a  
19 taxpayer with less than \$15,000,000 of gross receipts, as gross  
20 receipts are calculated in accordance with the gross receipts test of  
21 subsection (c) of section 448 of the Internal Revenue Code (26  
22 U.S.C. s.448), but without regard to the \$25,000,000 maximum or  
23 the adjustment for inflation of that subsection.

24 (C) <sup>1</sup>For purposes of this paragraph, "licensee" means the same  
25 as defined in section 3 of <sup>1</sup>P.L. c. (C. ) (pending before the  
26 Legislature as Assembly Bill No. 21 and Senate Bill No. 21 of  
27 2020) P.L.2021, c.16 (C.24:6I-33)<sup>1</sup>.

28 (l) "Real estate investment trust" shall mean any corporation,  
29 trust or association qualifying and electing to be taxed as a real  
30 estate investment trust under federal law.

31 (m) "Financial business corporation" shall mean any corporate  
32 enterprise which is (1) in substantial competition with the business  
33 of national banks and which (2) employs moneyed capital with the  
34 object of making profit by its use as money, through discounting  
35 and negotiating promissory notes, drafts, bills of exchange and  
36 other evidences of debt; buying and selling exchange; making of or  
37 dealing in secured or unsecured loans and discounts; dealing in  
38 securities and shares of corporate stock by purchasing and selling  
39 such securities and stock without recourse, solely upon the order  
40 and for the account of customers; or investing and reinvesting in  
41 marketable obligations evidencing indebtedness of any person,  
42 copartnership, association or corporation in the form of bonds,  
43 notes or debentures commonly known as investment securities; or  
44 dealing in or underwriting obligations of the United States, any  
45 state or any political subdivision thereof, or of a corporate  
46 instrumentality of any of them. This shall include, without  
47 limitation of the foregoing, business commonly known as industrial  
48 banks, dealers in commercial paper and acceptances, sales finance,

1 personal finance, small loan and mortgage financing businesses, as  
2 well as any other enterprise employing moneyed capital coming  
3 into competition with the business of national banks; provided that  
4 the holding of bonds, notes, or other evidences of indebtedness by  
5 individual persons not employed or engaged in the banking or  
6 investment business and representing merely personal investments  
7 not made in competition with the business of national banks, shall  
8 not be deemed financial business. Nor shall "financial business"  
9 include national banks, production credit associations organized  
10 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,  
11 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual  
12 insurance companies duly authorized to transact business in this  
13 State, security brokers or dealers or investment companies or  
14 bankers not employing moneyed capital coming into competition  
15 with the business of national banks, real estate investment trusts, or  
16 any of the following entities organized under the laws of this State:  
17 credit unions, savings banks, savings and loan and building and  
18 loan associations, pawnbrokers, and State banks and trust  
19 companies.

20 (n) "International banking facility" shall mean a set of asset and  
21 liability accounts segregated on the books and records of a  
22 depository institution, United States branch or agency of a foreign  
23 bank, or an Edge or Agreement Corporation that includes only  
24 international banking facility time deposits and international  
25 banking facility extensions of credit as such terms are defined in  
26 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the  
27 board of governors of the Federal Reserve System, 12 CFR Part  
28 204, effective December 3, 1981. In the event that the United  
29 States enacts a law, or the board of governors of the Federal  
30 Reserve System adopts a regulation which amends the present  
31 definition of international banking facility or of such facilities' time  
32 deposits or extensions of credit, the Commissioner of Banking and  
33 Insurance shall forthwith adopt regulations defining such terms in  
34 the same manner as such terms are set forth in the laws of the  
35 United States or the regulations of the board of governors of the  
36 Federal Reserve System. The regulations of the Commissioner of  
37 Banking and Insurance shall thereafter provide the applicable  
38 definitions.

39 (o) "S corporation" means a corporation included in the  
40 definition of an "S corporation" pursuant to section 1361 of the  
41 federal Internal Revenue Code of 1986, 26 U.S.C. s.1361.

42 (p) "New Jersey S corporation" means a corporation that is an S  
43 corporation; which has made a valid election pursuant to section 3  
44 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
45 corporation continuously since the effective date of the valid  
46 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-  
47 5.22).

1 (q) "Public Utility" means "public utility" as defined in  
2 R.S.48:2-13.

3 (r) "Qualified investment partnership" means a partnership  
4 under this act that has more than 10 members or partners with no  
5 member or partner owning more than a 50% interest in the entity  
6 and that derives at least 90% of its gross income from dividends,  
7 interest, payments with respect to securities loans, and gains from  
8 the sale or other disposition of stocks or securities or foreign  
9 currencies or commodities or other similar income (including but  
10 not limited to gains from swaps, options, futures or forward  
11 contracts) derived with respect to its business of investing or  
12 trading in those stocks, securities, currencies or commodities, but  
13 "investment partnership" shall not include a "dealer in securities"  
14 within the meaning of section 1236 of the federal Internal Revenue  
15 Code of 1986, 26 U.S.C. s.1236.

16 (s) "Savings institution" means a state or federally chartered  
17 building and loan association, savings and loan association, or  
18 savings bank.

19 (t) "Partnership" means an entity classified as a partnership for  
20 federal income tax purposes.

21 (u) "Prior net operating loss conversion carryover" means a net  
22 operating loss incurred in a privilege period ending prior to July 31,  
23 2019 and converted from a pre-allocation net operating loss to a  
24 post-allocation net operating loss as follows:

25 (1) As used in this subsection:

26 "Base year" means the last privilege period ending prior to July  
27 31, 2019.

28 "Base year BAF" means the taxpayer's business allocation factor  
29 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-  
30 6 through C.54:10A-10) for purposes of calculating entire net  
31 income for the base year, as such section was in effect for the last  
32 privilege period ending prior to July 31, 2019.

33 "UNOL" means the unabsorbed portion of net operating loss as  
34 calculated under paragraph (6) of subsection (k) of this section as  
35 such paragraph was in effect for the last privilege period ending  
36 prior to July 31, 2019, that was not deductible in previous privilege  
37 periods and was eligible for carryover on the last day of the base  
38 year subject to the limitations for deduction under such subsection,  
39 including any net operating loss sustained by the taxpayer during  
40 the base year.

41 (2) The prior net operating loss conversion carryover shall be  
42 calculated as follows:

43 (A) The taxpayer shall first calculate the tax value of its UNOL  
44 for the base year and for each preceding privilege period for which  
45 there is a UNOL. The value of the UNOL for each privilege period  
46 is equal to the product of (I) the amount of the taxpayer's UNOL for  
47 a privilege period, and (II) the taxpayer's base year BAF. This result

1 shall equal the taxpayer's prior net operating loss conversion  
2 carryover.

3 (B) The taxpayer shall continue to carry over its prior net  
4 operating loss conversion carryover to offset its allocated entire net  
5 income as provided in sections 6 through 10 of P.L.1945, c.162  
6 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on  
7 and after July 31, 2019. Such carryover periods shall not exceed  
8 the twenty privilege periods following the privilege period of the  
9 initial loss. The entire amount of the prior net operating loss  
10 conversion carryover for any privilege period shall be carried to the  
11 earliest of the privilege periods to which the loss may be carried.  
12 The portion of the prior net operating loss conversion carryover  
13 which shall be carried to each of the other privilege periods shall be  
14 the excess, if any, of the amount of the prior net operating loss  
15 conversion carryover over the sum of the entire net income,  
16 computed without the exclusions permitted in paragraphs (4) and  
17 (5) of subsection (k) of this section allocated to this State.

18 (C) The prior net operating loss conversion carryover computed  
19 under this subsection shall be applied against the entire net income  
20 allocated to this State before the net operating loss carryover  
21 computed under subsection (v) of this section.

22 (v) "Net operating loss deduction" means the amount allowed as  
23 a deduction for the net operating loss carryover to the privilege  
24 period, calculated as follows:

25 (1) Net operating loss carryover. A net operating loss for any  
26 privilege period ending on or after July 31, 2019, shall be a net  
27 operating loss carryover to each of the twenty privilege periods  
28 following the period of the loss. The entire amount of the net  
29 operating loss for any privilege period shall be carried to the earliest  
30 of the privilege periods to which the loss may be carried. The  
31 portion of the loss which shall be carried to each of the other  
32 privilege periods shall be the excess, if any, of the amount of the  
33 loss over the sum of the entire net income, computed without the  
34 exclusions permitted in paragraphs (4) and (5) of subsection (k) of  
35 this section allocated to this State.

36 (2) Net operating loss. For purposes of this paragraph the term  
37 "net operating loss" means the excess of the deductions over the  
38 gross income used in computing entire net income, without regard  
39 to any net operating loss carryover, and computed without the  
40 exclusions in paragraphs (4) and (5) of subsection (k) of this  
41 section, allocated to this State pursuant to sections 6 through 10 of  
42 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

43 (3) Reduction for discharge of indebtedness. A net operating  
44 loss for any privilege period ending on or after July 31, 2019, and  
45 any net operating loss carryover to such privilege period, shall be  
46 reduced by the amount excluded from federal taxable income under  
47 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of

1 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108,  
2 for the privilege period of the discharge of indebtedness.

3 (4) A net operating loss carryover shall not include any net  
4 operating loss incurred during any privilege period ending prior to  
5 July 31, 2019.

6 (5) Change in ownership. Where there is a change in 50% or  
7 more of the ownership of a corporation because of redemption or  
8 sale of stock and the corporation changes the trade or business  
9 giving rise to the loss, no net operating loss sustained before the  
10 changes may be carried over to be deducted from income earned  
11 after such changes. In addition, where the facts support the premise  
12 that the corporation was acquired under any circumstances for the  
13 primary purpose of the use of its net operating loss carryover, the  
14 director may disallow the carryover; provided, however, this  
15 paragraph shall not apply between members of a combined group  
16 reported on a New Jersey combined return.

17 (w) "Taxable net income" means entire net income allocated to  
18 this State as calculated pursuant to sections 6 through 8 of  
19 P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as modified by  
20 subtracting any prior net operating loss conversion carryforward  
21 calculated pursuant to subsection (u) of this section, and any net  
22 operating loss calculated pursuant to subsection (v) of this section.

23 (x) "Affiliated group" means, for purposes of section 23 of  
24 P.L.2018, c.48 (C.54:10A-4.11), an affiliated group as defined in  
25 section 1504 of the federal Internal Revenue Code, 26 U.S.C.  
26 s.1504, except such affiliated group shall include all U.S. domestic  
27 corporations that are commonly owned, directly or indirectly, by  
28 any member of such affiliated group, without regard to whether the  
29 affiliated group includes (1) corporations included in more than one  
30 federal consolidated return, (2) corporations engaged in one or more  
31 unitary businesses, or (3) corporations that are not engaged in a  
32 unitary business with any other member of the affiliated group.

33 For purposes of this subsection:

34 "U.S. domestic corporations" means: (1) business entities  
35 wherever incorporated or formed that are U.S. domestic  
36 corporations, are deemed to be, or are treated as U.S. domestic  
37 corporations under the provisions of the federal Internal Revenue  
38 Code; or (2) any entities incorporated or formed under the laws of a  
39 foreign nation that are required to file federal tax returns if such  
40 entities have effectively connected income within the meaning of  
41 the federal Internal Revenue Code; and

42 "Commonly owned" means that more than 50 percent of the  
43 voting control of each member of an affiliated group is directly or  
44 indirectly owned by a common owner or owners, either corporate or  
45 non-corporate, whether or not the owner or owners are members of  
46 the affiliated group. Whether voting control is indirectly owned  
47 shall be determined in accordance with section 318 of the federal  
48 Internal Revenue Code (26 U.S.C. s.318).

1 (y) "Combinable captive insurance company" means an entity  
2 that is treated as an association taxable as a corporation under the  
3 federal Internal Revenue Code:

4 (1) more than 50% of the voting stock of which is owned or  
5 controlled, directly or indirectly, by a single entity that is treated as  
6 an association taxable as a corporation under the federal Internal  
7 Revenue Code, and not exempt from federal income tax;

8 (2) that is licensed as a captive insurance company under the  
9 laws of this State or another jurisdiction;

10 (3) whose business includes providing, directly and indirectly,  
11 insurance or reinsurance covering the risks of its parent, members  
12 of its affiliated group, or both; and

13 (4) 50% or less of whose gross receipts for the privilege period  
14 consist of premiums from arrangements that constitute insurance for  
15 federal income tax purposes.

16 A combinable captive insurance company shall not be exempt  
17 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive  
18 insurance company that does not meet the definition of combinable  
19 captive insurance company shall be excluded as provided in  
20 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and  
21 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

22 For purposes of this definition:

23 "Affiliated group" shall have the same meaning as that term is  
24 given by section 1504 of the federal Internal Revenue Code, 26  
25 U.S.C. s.1504, except that the term "common parent corporation" as  
26 used in section 1504 of the federal Internal Revenue Code, 26  
27 U.S.C. s.1504, shall mean any person, as defined in section 7701 of  
28 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references  
29 to "at least 80%" in section 1504 of the federal Internal Revenue  
30 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section  
31 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall  
32 be read without regard to the exclusions provided for in subsection  
33 (b) of that section.

34 "Gross receipts" includes the amounts included in gross receipts  
35 for purposes of paragraph (15) of subsection (c) of section 501 of  
36 the federal Internal Revenue Code, 26 U.S.C. s.501, except that  
37 those amounts also include all premiums.

38 "Premiums" includes consideration for annuity contracts and  
39 excludes any part of the consideration for insurance, reinsurance, or  
40 annuity contracts that do not provide bona fide insurance,  
41 reinsurance, or annuity benefits.

42 (z) "Combined group" means the group of all companies that  
43 have common ownership and are engaged in a unitary business,  
44 where at least one company is subject to tax under this chapter, and  
45 shall include all business entities, except as provided for under any  
46 section of the Corporation Business Tax Act (1945), P.L.1945,  
47 c.162 (C.54:10A-1 et seq.).

1 A combined group shall be treated, for privilege periods ending  
2 on and after July 31, 2020, as one taxpayer for purposes of  
3 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162  
4 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for  
5 the income derived from the unitary business; provided however,  
6 with regard to the surtax imposed pursuant to section 1 of P.L.2018,  
7 c.48 (C.54:10A-5.41) and for that purpose only, the portion of  
8 income that is attributable to a member which is a public utility  
9 exempt from the surtax shall not be included when computing the  
10 surtax due.

11 (aa) "Common ownership" means that more than 50% of the  
12 voting control of each member of a combined group is directly or  
13 indirectly owned by a common owner or owners, either corporate or  
14 non-corporate, whether or not the owner or owners are members of  
15 the combined group. Whether voting control is indirectly owned  
16 shall be determined in accordance with section 318 of the federal  
17 Internal Revenue Code, 26 U.S.C. s.318.

18 (bb) "Group privilege period" means, if two or more members in  
19 the combined group file in the same federal consolidated tax return,  
20 the same income year as that used on the federal consolidated tax  
21 return and, in all other cases, the privilege period of the managerial  
22 member.

23 (cc) "Managerial member" means if the combined group has a  
24 common parent corporation and that common parent corporation is  
25 a taxable member, the managerial member shall be the common  
26 parent corporation. In other cases, the combined group shall select  
27 a taxable member as its managerial member or, in the discretion of  
28 the director or upon failure of the combined group to select its  
29 managerial member, the director shall designate a taxable member  
30 of the combined group as managerial member.

31 (dd) "Member" means a business entity that is a part of a  
32 combined group.

33 A corporation exempt pursuant to section 3 of P.L.1945, c.162  
34 (C.54:10A-3) from the tax imposed by P.L.1945, c.162 (C.54:10A-1  
35 et seq.) shall not be a member of a combined group.

36 (ee) "Nontaxable member" means a member that is: (i) not  
37 subject to tax pursuant to the Corporation Business Tax Act (1945),  
38 P.L.1945, c.162 (C.54:10A-1 et seq.); or (ii) (deleted by  
39 amendment, P.L.2020, c.118 (C.54:10A-5.46 et al.).

40 (ff) "Taxable member" means a member that is subject to tax  
41 pursuant to the Corporation Business Tax Act (1945), P.L.1945,  
42 c.162 (C.54:10A-1 et seq.).

43 A New Jersey S corporation shall only be included as a taxable  
44 member of a combined group filing a New Jersey combined return  
45 if the New Jersey S Corporation elects to be included as a member  
46 and taxed at the same rate as the other members of the combined  
47 group. A New Jersey S corporation that does not elect to be

1 included shall be excluded as a member of the combined return and  
2 shall file a separate return.

3 (gg) "Unitary business" means a single economic enterprise that  
4 is made up either of separate parts of a single business entity or of a  
5 group of business entities under common ownership that are  
6 sufficiently interdependent, integrated, and interrelated through  
7 their activities so as to provide a synergy and mutual benefit that  
8 produces a sharing or exchange of value among them and a  
9 significant flow of value among the separate parts. "Unitary  
10 business" shall be construed to the broadest extent permitted under  
11 the Constitution of the United States. A business conducted by a  
12 partnership which is in a unitary business with the combined group  
13 shall be treated as the business of the partners that are members of  
14 the combined group, whether the partnership interest is held directly  
15 or indirectly through a series of partnerships, to the extent of a  
16 partner's distributive share of partnership income. The amount of  
17 partnership income to be included in the partner's entire net income  
18 shall be determined in accordance with subsection a. of section 3 of  
19 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of  
20 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business  
21 conducted directly or indirectly by one corporation is unitary with  
22 that portion of a business conducted by another corporation through  
23 its direct or indirect interest in a partnership.

24 (cf: P.L.2020, c.118, s.3)]<sup>2</sup>

25

26 <sup>2</sup>1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to  
27 read as follows:

28 4. For the purposes of this act, unless the context requires a  
29 different meaning:

30 (a) "Commissioner" or "director" shall mean the Director of the  
31 Division of Taxation of the State Department of the Treasury.

32 (b) "Allocation factor" shall mean the proportionate part of a  
33 taxpayer's net worth or entire net income used to determine a  
34 measure of its tax under this act.

35 (c) "Corporation" shall mean any corporation, joint-stock  
36 company or association and any business conducted by a trustee or  
37 trustees wherein interest or ownership is evidenced by a certificate  
38 of interest or ownership or similar written instrument, any other  
39 entity classified as a corporation for federal income tax purposes,  
40 and any state or federally chartered building and loan association or  
41 savings and loan association.

42 (d) "Net worth" shall mean the aggregate of the values disclosed  
43 by the books of the corporation for (1) issued and outstanding  
44 capital stock, (2) paid-in or capital surplus, (3) earned surplus and  
45 undivided profits, and (4) surplus reserves which can reasonably be  
46 expected to accrue to holders or owners of equitable shares, not  
47 including reasonable valuation reserves, such as reserves for  
48 depreciation or obsolescence or depletion. Notwithstanding the

1 foregoing, net worth shall not include any deduction for the amount  
2 of the excess depreciation described in paragraph (2) (F) of  
3 subsection (k) of this section. The foregoing aggregate of values  
4 shall be reduced by 50% of the amount disclosed by the books of  
5 the corporation for investment in the capital stock of one or more  
6 subsidiaries, which investment is defined as ownership (1) of at  
7 least 80% of the total combined voting power of all classes of stock  
8 of the subsidiary entitled to vote and (2) of at least 80% of the total  
9 number of shares of all other classes of stock except nonvoting  
10 stock which is limited and preferred as to dividends. In the case of  
11 investment in an entity organized under the laws of a foreign  
12 country, the foregoing requisite degree of ownership shall effect a  
13 like reduction of such investment from the net worth of the  
14 taxpayer, if the foreign entity is considered a corporation for any  
15 purpose under the United States federal income tax laws, such as  
16 (but not by way of sole examples) for the purpose of supplying  
17 deemed paid foreign tax credits or for the purpose of status as a  
18 controlled foreign corporation. In calculating the net worth of a  
19 taxpayer entitled to reduction for investment in subsidiaries, the  
20 amount of liabilities of the taxpayer shall be reduced by such  
21 proportion of the liabilities as corresponds to the ratio which the  
22 excluded portion of the subsidiary values bears to the total assets of  
23 the taxpayer.

24 In the case of banking corporations which have international  
25 banking facilities as defined in subsection (n), the foregoing  
26 aggregate of values shall also be reduced by retained earnings of the  
27 international banking facility. Retained earnings means the  
28 earnings accumulated over the life of such facility and shall not  
29 include the distributive share of dividends paid and federal income  
30 taxes paid or payable during the tax year.

31 If in the opinion of the director, the corporation's books do not  
32 disclose fair valuations the director may make a reasonable  
33 determination of the net worth which, in his opinion, would reflect  
34 the fair value of the assets, exclusive of subsidiary investments as  
35 defined aforesaid, carried on the books of the corporation, in  
36 accordance with sound accounting principles, and such  
37 determination shall be used as net worth for the purpose of this act.

38 (e) (Deleted by amendment, P.L.1998, c.114.)

39 (f) "Investment company" shall mean any corporation whose  
40 business during the period covered by its report consisted, to the  
41 extent of at least 90% thereof of holding, investing and reinvesting  
42 in stocks, bonds, notes, mortgages, debentures, patents, patent rights  
43 and other securities for its own account, but this shall not include  
44 any corporation which: (1) is a merchant or a dealer of stocks,  
45 bonds and other securities, regularly engaged in buying the same  
46 and selling the same to customers; or (2) had less than 90% of its  
47 average gross assets in New Jersey, at cost, invested in stocks,  
48 bonds, debentures, mortgages, notes, patents, patent rights or other

1 securities or consisting of cash on deposit during the period covered  
2 by its report; or (3) is a banking corporation, a savings institution,  
3 or a financial business corporation as defined in the Corporation  
4 Business Tax Act.

5 (g) "Regulated investment company" shall mean any corporation  
6 which for a period covered by its report, is registered and regulated  
7 under the Investment Company Act of 1940 (54 Stat. 789), as  
8 amended.

9 (h) "Taxpayer" shall mean any corporation, any combined group  
10 filing a mandatory or elective New Jersey combined return, and any  
11 partnership required, or consenting, to report or to pay taxes,  
12 interest or penalties under this act. "Taxpayer" shall not include a  
13 partnership that is listed on a United States national stock exchange.

14 (i) "Fiscal year" shall mean an accounting period ending on any  
15 day other than the last day of December on the basis of which the  
16 taxpayer is required to report for federal income tax purposes.

17 (j) Except as herein provided, "privilege period" shall mean the  
18 calendar or fiscal accounting period for which a tax is payable  
19 under this act.

20 (k) "Entire net income" shall mean total net income from all  
21 sources, whether within or without the United States, and shall  
22 include the gain derived from the employment of capital or labor, or  
23 from both combined, as well as profit gained through a sale or  
24 conversion of capital assets.

25 For the purpose of this act, the amount of a taxpayer's entire net  
26 income shall be deemed prima facie to be equal in amount to the  
27 taxable income, before net operating loss deduction and special  
28 deductions, which the taxpayer is required to report, or, if the  
29 taxpayer is classified as a partnership for federal tax purposes,  
30 would otherwise be required to report, to the United States Treasury  
31 Department for the purpose of computing its federal income tax,  
32 provided however, that in the determination of such entire net  
33 income,

34 (1) Entire net income shall exclude for the periods set forth in  
35 paragraph (2)(F)(i) of this subsection, any amount, except with  
36 respect to qualified mass commuting vehicles as described in  
37 section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect  
38 immediately prior to January 1, 1984, which is included in a  
39 taxpayer's federal taxable income solely as a result of an election  
40 made pursuant to the provisions of paragraph (8) of that section.

41 (2) Entire net income shall be determined without the exclusion,  
42 deduction or credit of:

43 (A) The amount of any exemption or credit allowed in any law of  
44 the United States imposing any tax on or measured by the income of  
45 corporations.

46 (B) Any part of any income from dividends or interest on any  
47 kind of stock, securities or indebtedness, except as provided in  
48 paragraph (5) of subsection (k) of this section.

1 (C) Taxes paid or accrued to the United States, a possession or  
2 territory of the United States, a state, a political subdivision thereof,  
3 or the District of Columbia, or to any foreign country, state,  
4 province, territory or subdivision thereof, on or measured by profits  
5 or income, or business presence or business activity, or the tax  
6 imposed by this act, or any tax paid or accrued with respect to  
7 subsidiary dividends excluded from entire net income as provided  
8 in paragraph (5) of subsection (k) of this section.

9 (D) (Deleted by amendment, P.L.1985, c.143.)

10 (E) (Deleted by amendment, P.L.1995, c.418.)

11 (F) (i) The amount by which depreciation reported to the United  
12 States Treasury Department for property placed in service on and  
13 after January 1, 1981, but prior to taxpayer fiscal or calendar  
14 accounting years beginning on and after the effective date of  
15 P.L.1993, c.172, for purposes of computing federal taxable income  
16 in accordance with section 168 of the Internal Revenue Code in  
17 effect after December 31, 1980, exceeds the amount of depreciation  
18 determined in accordance with the Internal Revenue Code  
19 provisions in effect prior to January 1, 1981, but only with respect  
20 to a taxpayer's accounting period ending after December 31, 1981;  
21 provided, however, that where a taxpayer's accounting period  
22 begins in 1981 and ends in 1982, no modification shall be required  
23 with respect to this paragraph (F) for the report filed for such period  
24 with respect to property placed in service during that part of the  
25 accounting period which occurs in 1981. The provisions of this  
26 subparagraph shall not apply to assets placed in service prior to  
27 January 1, 1998 of a gas, gas and electric, and electric public utility  
28 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
29 seq.) prior to 1998.

30 (ii) For the periods set forth in subparagraph (F)(i) of paragraph  
31 (2) of this subsection, any amount, except with respect to qualified  
32 mass commuting vehicles as described in section 168(f)(8)(D)(v) of  
33 the Internal Revenue Code as in effect immediately prior to January  
34 1, 1984, which the taxpayer claimed as a deduction in computing  
35 federal income tax pursuant to a qualified lease agreement under  
36 paragraph (8) of that section.

37 The director shall promulgate rules and regulations necessary to  
38 carry out the provisions of this section, which rules shall provide,  
39 among others, the manner in which the remaining life of property  
40 shall be reported.

41 (G) (i) The amount of any civil, civil administrative, or criminal  
42 penalty or fine, including a penalty or fine under an administrative  
43 consent order, assessed and collected for a violation of a State or  
44 federal environmental law, an administrative consent order, or an  
45 environmental ordinance or resolution of a local governmental  
46 entity, and any interest earned on the penalty or fine, and any  
47 economic benefits having accrued to the violator as a result of a  
48 violation, which benefits are assessed and recovered in a civil, civil

1 administrative, or criminal action, or pursuant to an administrative  
2 consent order. The provisions of this paragraph shall not apply to a  
3 penalty or fine assessed or collected for a violation of a State or  
4 federal environmental law, or local environmental ordinance or  
5 resolution, if the penalty or fine was for a violation that resulted  
6 from fire, riot, sabotage, flood, storm event, natural cause, or other  
7 act of God beyond the reasonable control of the violator, or caused  
8 by an act or omission of a person who was outside the reasonable  
9 control of the violator.

10 (ii) The amount of treble damages paid to the Department of  
11 Environmental Protection pursuant to subsection a. of section 7 of  
12 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
13 department in removing, or arranging for the removal of, an  
14 unauthorized discharge upon failure of the discharger to comply  
15 with a directive from the department to remove, or arrange for the  
16 removal of, the discharge.

17 (H) The amount of any sales and use tax paid by a utility vendor  
18 pursuant to section 71 of P.L.1997, c.162.

19 (I) Interest paid, accrued or incurred for the privilege period to a  
20 related member, as defined in section 5 of P.L.2002, c.40  
21 (C.54:10A-4.4), except that a deduction shall be permitted to the  
22 extent that the taxpayer establishes by clear and convincing  
23 evidence, as determined by the director, that: (i) a principal purpose  
24 of the transaction giving rise to the payment of the interest was not  
25 to avoid taxes otherwise due under Title 54 of the Revised Statutes  
26 or Title 54A of the New Jersey Statutes, (ii) the interest is paid  
27 pursuant to arm's length contracts at an arm's length rate of interest,  
28 and (iii)(aa) the related member was subject to a tax on its net  
29 income or receipts in this State or another state or possession of the  
30 United States or in a foreign nation, (bb) a measure of the tax  
31 includes the interest received from the related member, and (cc) the  
32 rate of tax applied to the interest received by the related member is  
33 equal to or greater than a rate three percentage points less than the  
34 rate of tax applied to taxable interest by this State pursuant to  
35 section 5 of P.L.1945, c.162 (C.54:10A-5).

36 A deduction shall also be permitted if the taxpayer establishes by  
37 clear and convincing evidence, as determined by the director, that  
38 the disallowance of a deduction is unreasonable, or the taxpayer and  
39 the director agree in writing to the application or use of an  
40 alternative method of apportionment under section 8 of P.L.1945,  
41 c.162 (C.54:10A-8); nothing in this subsection shall be construed to  
42 limit or negate the director's authority to otherwise enter into  
43 agreements and compromises otherwise allowed by law.

44 A deduction shall also be permitted to the extent that the  
45 taxpayer establishes by a preponderance of the evidence, as  
46 determined by the director, that the interest is directly or indirectly  
47 paid, accrued or incurred to (i) a related member in a foreign nation  
48 which has in force a comprehensive income tax treaty with the

1 United States and the related member (aa) was subject to tax in the  
2 foreign nation on a tax base that included the payment paid,  
3 accrued, or incurred; and (bb) under which the related member's  
4 income received from the transaction was taxed at an effective tax  
5 rate equal to or greater than a rate of three percentage points less  
6 than the rate of tax applied to taxable interest by the State of New  
7 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),  
8 provided however that the taxpayer shall disclose on its return for  
9 the privilege period the name of the related member, the amount of  
10 the interest, the relevant foreign nation, and such other information  
11 as the director may prescribe or (ii) to an independent lender and  
12 the taxpayer guarantees the debt on which the interest is required.  
13 The adjustments required by this subparagraph shall not apply to  
14 transactions between related members included in a combined  
15 group reported on a New Jersey combined return.

16 (J) (i) Amounts deducted for federal tax purposes pursuant to  
17 section 199 of the federal Internal Revenue Code of 1986, 26  
18 U.S.C. s.199, except that this exclusion shall not apply to amounts  
19 deducted pursuant to that section that are exclusively based upon  
20 domestic production gross receipts of the taxpayer which are  
21 derived only from any lease, rental, license, sale, exchange, or other  
22 disposition of qualifying production property which the taxpayer  
23 demonstrates to the satisfaction of the director was manufactured or  
24 produced by the taxpayer in whole or in significant part within the  
25 United States but not qualified production property that was grown  
26 or extracted by the taxpayer. "Manufactured or produced" as used  
27 in this paragraph shall be limited to performance of an operation or  
28 series of operations the object of which is to place items of tangible  
29 personal property in a form, composition, or character different  
30 from that in which they were acquired. The change in form,  
31 composition, or character shall be a substantial change, and result in  
32 a transformation of property into a different or substantially more  
33 usable product.

34 (ii) For privilege periods beginning after December 31, 2017,  
35 notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-1 et  
36 seq.) or any other law to the contrary, for the purposes of  
37 determining the amount of income pursuant to P.L.1945, c.162  
38 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be  
39 taken as a deduction pursuant to section 199A of the Internal  
40 Revenue Code (26 U.S.C. s.199A).

41 (K) For privilege periods beginning after December 31, 2017, the  
42 interest deduction limitation in subsection (j) of section 163 of the  
43 Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-rata  
44 basis to interest paid to both related and unrelated parties,  
45 regardless of whether the related parties are subject to the add-back  
46 provision of either subparagraph (I) of paragraph (2) of this  
47 subsection or in section 5 of P.L.2002, c.40 (C.54:10A-4.4).

1 (3) The director may, whenever necessary to properly reflect the  
2 entire net income of any taxpayer, determine the year or period in  
3 which any item of income or deduction shall be included, without  
4 being limited to the method of accounting employed by the  
5 taxpayer.

6 (4) There shall be allowed as a deduction from entire net income  
7 of a banking corporation, to the extent not deductible in  
8 determining federal taxable income, the eligible net income of an  
9 international banking facility determined as follows:

10 (A) The eligible net income of an international banking facility  
11 shall be the amount remaining after subtracting from the eligible  
12 gross income the applicable expenses;

13 (B) Eligible gross income shall be the gross income derived by  
14 an international banking facility, which shall include, but not be  
15 limited to, gross income derived from:

16 (i) Making, arranging for, placing or carrying loans to foreign  
17 persons, provided, however, that in the case of a foreign person  
18 which is an individual, or which is a foreign branch of a domestic  
19 corporation (other than a bank), or which is a foreign corporation or  
20 foreign partnership which is controlled by one or more domestic  
21 corporations (other than banks), domestic partnerships or resident  
22 individuals, all the proceeds of the loan are for use outside of the  
23 United States;

24 (ii) Making or placing deposits with foreign persons which are  
25 banks or foreign branches of banks (including foreign subsidiaries)  
26 or foreign branches of the taxpayers or with other international  
27 banking facilities;

28 (iii) Entering into foreign exchange trading or hedging  
29 transactions related to any of the transactions described in this  
30 paragraph; or

31 (iv) Such other activities as an international banking facility  
32 may, from time to time, be authorized to engage in;

33 (C) Applicable expenses shall be any expense or other  
34 deductions attributable, directly or indirectly, to the eligible gross  
35 income described in subparagraph (B) of this paragraph.

36 (5) (A) (i) Entire net income shall exclude 100% of dividends  
37 which were included in computing such taxable income for federal  
38 income tax purposes, paid to the taxpayer by one or more  
39 subsidiaries owned by the taxpayer to the extent of the 80% or more  
40 ownership of investment described in subsection (d) of this section  
41 for privilege periods beginning on or before December 31, 2016.

42 (ii) For privilege periods beginning after December 31, 2016  
43 and before January 1, 2019, entire net income shall exclude 95% of  
44 dividends which were included in computing such taxable income  
45 for federal income tax purposes, paid or deemed paid, to the  
46 taxpayer by one or more subsidiaries owned by the taxpayer to the  
47 extent of the 80% or more ownership of investment described in  
48 subsection (d) of this section. For the purposes of calculating the

1 tax liability owed for the paid or deemed paid dividends included in  
2 entire net income by this subparagraph (ii), the taxpayer shall  
3 use either their three-year average allocation factor for the  
4 taxpayer's 2014 through 2016 tax years reported on the taxpayer's  
5 tax returns or 3.5 percent, whichever is lower.

6 (iii) For privilege periods beginning on and after January 1,  
7 2019, entire net income shall exclude 95% of dividends which were  
8 included in computing such taxable income for federal income tax  
9 purposes, paid or deemed paid to the taxpayer by one or more  
10 subsidiaries owned by the taxpayer to the extent of the 80% or more  
11 ownership of investment described in subsection (d) of this section.

12 (B) Entire net income shall exclude 50% of dividends which  
13 were included in computing such taxable income for federal income  
14 tax purposes, paid or deemed paid to the taxpayer by one or more  
15 subsidiaries owned by the taxpayer to the extent of 50% or more  
16 ownership of investment, such ownership of investment calculated  
17 in the same manner as the 80% or more of ownership of investment  
18 is calculated as described in subsection (d) of this section.

19 (C) To the extent a subsidiary received dividends from other  
20 subsidiaries and included those dividends in its entire net income  
21 for the purposes of determining its tax liability pursuant to section 5  
22 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,  
23 the taxpayer receiving those same dividends from the subsidiary  
24 shall exclude those dividends from its entire net income based on  
25 the subsidiary's allocation factor used by the subsidiary in  
26 determining its tax liability pursuant to section 5 of P.L.1945, c.162  
27 (C.54:10A-5). This subparagraph (C) shall not apply to privilege  
28 periods ending on and after July 31, 2019.

29 (D) For privilege periods ending on and after July 31, 2019 but  
30 before July 31, 2020, to the extent a subsidiary received dividends  
31 from other subsidiaries and included those dividends in its entire net  
32 income for the purposes of determining its tax liability pursuant to  
33 section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those  
34 dividends, the taxpayer receiving those same dividends from the  
35 subsidiary shall exclude those dividends from its entire net income.

36 (E) For privilege periods ending on and after July 31, 2020, for  
37 purposes of this paragraph (5), the members of a combined group  
38 filing a New Jersey combined return shall be treated as one taxpayer  
39 with regard to dividends and deemed dividends that were received  
40 as part of the unitary business of the combined group.

41 (6) (A) Net operating loss deduction. For privilege periods  
42 ending before July 31, 2019, there shall be allowed as a deduction  
43 for the privilege period the net operating loss carryover to that  
44 period.

45 (B) Net operating loss carryover. A net operating loss for any  
46 privilege period ending after June 30, 1984 shall be a net operating  
47 loss carryover to each of the seven privilege periods following the  
48 period of the loss and a net operating loss for any privilege period

1 ending after June 30, 2009 shall be a net operating loss carryover to  
2 each of the twenty privilege periods following the period of the  
3 loss. The entire amount of the net operating loss for any privilege  
4 period (the "loss period") shall be carried to the earliest of the  
5 privilege periods to which the loss may be carried. The portion of  
6 the loss which shall be carried to each of the other privilege periods  
7 shall be the excess, if any, of the amount of the loss over the sum of  
8 the entire net income, computed without the exclusions permitted in  
9 paragraphs (4) and (5) of this subsection or the net operating loss  
10 deduction provided by subparagraph (A) of this paragraph, for each  
11 of the prior privilege periods to which the loss may be carried.

12 (C) Net operating loss. For purposes of this paragraph the term  
13 "net operating loss" means the excess of the deductions over the  
14 gross income used in computing entire net income without the net  
15 operating loss deduction provided for in subparagraph (A) of this  
16 paragraph and the exclusions in paragraphs (4) and (5) of this  
17 subsection.

18 (D) Change in ownership. Where there is a change in 50% or  
19 more of the ownership of a corporation because of redemption or  
20 sale of stock and the corporation changes the trade or business  
21 giving rise to the loss, no net operating loss sustained before the  
22 changes may be carried over to be deducted from income earned  
23 after such changes. In addition where the facts support the premise  
24 that the corporation was acquired under any circumstances for the  
25 primary purpose of the use of its net operating loss carryover, the  
26 director may disallow the carryover.

27 (E) Notwithstanding the provisions of this paragraph (6) of  
28 subsection (k) of this section to the contrary, for privilege periods  
29 beginning during calendar year 2002 and calendar year 2003, no  
30 deduction for any net operating loss carryover shall be allowed and  
31 for privilege periods beginning during calendar year 2004 and  
32 calendar year 2005, there shall be allowed as a deduction for the  
33 privilege period so much of the net operating loss carryover as  
34 reduces entire net income otherwise calculated by 50%. If and only  
35 to the extent that any net operating loss carryover deduction is  
36 disallowed by reason of this subparagraph (E), the date on which  
37 the amount of the disallowed net operating loss carryover deduction  
38 would otherwise expire shall be extended by a period equal to the  
39 period for which application of the net operating loss was  
40 disallowed by this subparagraph.

41 Provided, that this subparagraph (E) shall not restrict the  
42 surrender or acquisition of corporation business tax benefit  
43 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-  
44 7.42a) and shall not restrict the application of corporation business  
45 tax benefit certificates pursuant to section 2 of P.L.1997, c.334  
46 (C.54:10A-4.2).

47 (F) Reduction for discharge of indebtedness. A net operating  
48 loss for any privilege period ending after June 30, 2014, and any net

1 operating loss carryover to such privilege period, shall be reduced  
2 by the amount excluded from federal taxable income under  
3 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of  
4 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),  
5 for the privilege period of the discharge of indebtedness.

6 (7) The entire net income of gas, electric and gas and electric  
7 public utilities that were subject to, or would have been subject to  
8 tax if doing business in this State, the provisions of P.L.1940, c.5  
9 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by  
10 substituting the New Jersey depreciation allowance for federal tax  
11 depreciation with respect to assets placed in service prior to January  
12 1, 1998. For gas, electric, and gas and electric public utilities that  
13 were subject to, or would have been subject to tax if doing business  
14 in this State, the provisions of P.L.1940, c.5 (C.54:30A-49 et seq.)  
15 prior to 1998, the New Jersey depreciation allowance shall be  
16 computed as follows: All depreciable assets placed in service prior  
17 to January 1, 1998 shall be considered a single asset account. The  
18 New Jersey tax basis of this depreciable asset account shall be an  
19 amount equal to the carryover adjusted basis for federal income tax  
20 purposes on December 31, 1997 of all depreciable assets in service  
21 on December 31, 1997, increased by the excess, of the "net carrying  
22 value," defined to be adjusted book basis of all assets and liabilities,  
23 excluding deferred income taxes, recorded on the public utility's  
24 books of account on December 31, 1997, over the carryover  
25 adjusted basis for federal income tax purposes on December 31,  
26 1997 of all assets and liabilities owned by the gas, electric, or gas  
27 and electric public utility as of December 31, 1997. "Books of  
28 account" for gas, gas and electric, and electric public utilities means  
29 the uniform system of accounts as promulgated by the Federal  
30 Energy Regulatory Commission and adopted by the Board of Public  
31 Utilities. The following adjustments to entire net income shall be  
32 made pursuant to this section:

33 (A) Depreciation for property placed in service prior to January  
34 1, 1998 shall be adjusted as follows:

35 (i) Depreciation for federal income tax purposes shall be  
36 disallowed in full.

37 (ii) A deduction shall be allowed for the New Jersey  
38 depreciation allowance. The New Jersey depreciation allowance  
39 shall be computed for the single asset account described above  
40 based on the New Jersey tax basis as adjusted above as if all assets  
41 in the single asset account were first placed in service on January 1,  
42 1998. Depreciation shall be computed using the straight line method  
43 over a thirty-year life. A full year's depreciation shall be allowed in  
44 the initial tax year. No half-year convention shall apply. The  
45 depreciable basis of the single account shall be reduced by the  
46 adjusted federal tax basis of assets sold, retired, or otherwise  
47 disposed of during any year on which gain or loss is recognized for

1 federal income tax purposes as described in subparagraph (B) of  
2 this paragraph.

3 (B) Gains and losses on sales, retirements and other dispositions  
4 of assets placed in service prior to January 1, 1998 shall be  
5 recognized and reported on the same basis as for federal income tax  
6 purposes.

7 (C) The Director of the Division of Taxation shall promulgate  
8 regulations describing the methodology for allocating the single  
9 asset account in the event that a portion of the utility's operations  
10 are separated, spun-off, transferred to a separate company or  
11 otherwise desegregated.

12 (8) In the case of taxpayers that are gas, electric, gas and  
13 electric, or telecommunications public utilities as defined pursuant  
14 to subsection (q) of this section, the director shall have authority to  
15 promulgate rules and issue guidance correcting distortions and  
16 adjusting timing differences resulting from the adoption of  
17 P.L.1997, c.162 (C.54:10A-5.25 et al.).

18 (9) Notwithstanding paragraph (1) of this subsection, entire net  
19 income shall not include the income derived by a corporation  
20 organized in a foreign country from the international operation of a  
21 ship or ships, or from the international operation of aircraft, if such  
22 income is exempt from federal taxation pursuant to section 883 of  
23 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

24 (10) Entire net income shall exclude all income of an alien  
25 corporation the activities of which are limited in this State to  
26 investing or trading in stocks and securities for its own account,  
27 investing or trading in commodities for its own account, or any  
28 combination of those activities, within the meaning of section 864  
29 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in  
30 effect on December 31, 1998. Notwithstanding the previous  
31 sentence, if an alien corporation undertakes one or more infrequent,  
32 extraordinary or non-recurring activities, including but not limited  
33 to the sale of tangible property, only the income from such  
34 infrequent, extraordinary or non-recurring activity shall be subject  
35 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et  
36 seq.), and that amount of income subject to tax shall be determined  
37 without regard to the allocation to that specific transaction of any  
38 general business expense of the taxpayer and shall be specifically  
39 assigned to this State for taxation by this State without regard to  
40 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this  
41 paragraph, "alien corporation" means a corporation organized under  
42 the laws of a jurisdiction other than the United States or its political  
43 subdivisions.

44 (11) No deduction shall be allowed for research and  
45 experimental expenditures, to the extent that those research and  
46 experimental expenditures are qualified research expenses or basic  
47 research payments for which an amount of credit is claimed  
48 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless

1 those research and experimental expenditures are also used to  
2 compute a federal credit claimed pursuant to section 41 of the  
3 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

4 (12) (A) Notwithstanding the provisions of subsection (k) of  
5 section 168 of the federal Internal Revenue Code of 1986, 26  
6 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal  
7 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal  
8 law, for property acquired after September 10, 2001, the  
9 depreciation deduction otherwise allowed pursuant to section 167 of  
10 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall  
11 be determined pursuant to the provisions of the federal Internal  
12 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on  
13 December 31, 2001.

14 (B) The director shall prescribe the rules and regulations  
15 necessary to carry out the provisions of this paragraph, including,  
16 among others, those for determining the adjusted basis of the  
17 acquired property for the purposes of the Corporation Business Tax  
18 Act (1945), P.L.1945, c.162.

19 (13) (A) Notwithstanding the provisions of section 179 of the  
20 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for  
21 property placed in service on or after January 1, 2004, the costs that  
22 a taxpayer may otherwise elect to treat as an expense which is not  
23 chargeable to a capital account shall be determined pursuant to the  
24 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.  
25 s.1 et seq.) in effect on December 31, 2002.

26 (B) The director shall prescribe the rules and regulations  
27 necessary to carry out the provisions of this paragraph, including,  
28 among others, those for determining the adjusted basis of the  
29 acquired property for the purposes of the Corporation Business Tax  
30 Act (1945), P.L.1945, c.162.

31 (14) Notwithstanding the provisions of subsection (i) of section  
32 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),  
33 for privilege periods beginning after December 31, 2008 and before  
34 January 1, 2011, entire net income shall include the amount of  
35 discharge of indebtedness income excluded for federal income tax  
36 purposes pursuant to subsection (i) of section 108 of the federal  
37 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege  
38 periods beginning on or after January 1, 2014 and before January 1,  
39 2019, entire net income shall exclude the amount of discharge of  
40 indebtedness income included for federal income tax purposes,  
41 pursuant to subsection (i) of section 108 of the federal Internal  
42 Revenue Code of 1986 (26 U.S.C. s.108).

43 (15) Entire net income shall exclude the gain or income derived  
44 from the sale or assignment of a tax credit transfer certificate  
45 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section  
46 10 of P.L.2014, c.63 (C.34:1B-251).

47 (16) (A) There shall be allowed as a deduction an amount  
48 computed in accordance with this paragraph.

1 (B) For purposes of this paragraph, "net deferred tax liability"  
2 means deferred tax liabilities that exceed the deferred tax assets of  
3 the combined group, as computed in accordance with generally  
4 accepted accounting principles, and "net deferred tax asset" means  
5 that deferred tax assets exceed the deferred tax liabilities of the  
6 combined group, as computed in accordance with generally  
7 accepted accounting principles.

8 (C) Only publicly traded companies, including affiliated  
9 corporations participating in the filing of a publicly traded  
10 company's financial statements prepared in accordance with  
11 generally accepted accounting principles, as of the effective date of  
12 this paragraph, shall be eligible for this deduction.

13 (D) If the provisions of sections 18 through 23 of P.L.2018, c.48  
14 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to  
15 the members' net deferred tax liability or an aggregate decrease to  
16 the members' net deferred tax asset, or an aggregate change from a  
17 net deferred tax asset to a net deferred tax liability, the combined  
18 group shall be entitled to a deduction, as determined in this  
19 paragraph.

20 (E) For 10 years beginning with the combined group's first  
21 privilege period beginning on or after January 1 of the fifth year  
22 after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a  
23 combined group shall be entitled to a deduction from combined  
24 group entire net income equal to one-tenth of the amount necessary  
25 to offset the increase in the net deferred tax liability or decrease in  
26 the net deferred tax asset, or aggregate change from a net deferred  
27 tax asset to a net deferred tax liability. Such increase in the net  
28 deferred tax liability or decrease in the net deferred tax asset or the  
29 aggregate change from a net deferred tax asset to a net deferred tax  
30 liability shall be computed based on the change that would result  
31 from the imposition of the unitary reporting requirements under  
32 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and  
33 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided  
34 under this paragraph as of the effective date of this paragraph.

35 (F) The deferred tax impact determined in subparagraph (E) of  
36 this paragraph must be converted to the annual Deferred Tax  
37 Deduction amount, as follows:

38 (i) the deferred tax impact determined in subparagraph (E) of  
39 this paragraph shall be divided by the rate determined under section  
40 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,  
41 c.48 (C.54:10A-5.41 et al.);

42 (ii) the resulting amount shall be further divided by the New  
43 Jersey unitary business allocation factor that was used by the  
44 combined group in the calculation of the deferred tax assets and  
45 deferred tax liabilities as described in subparagraph (E) of this  
46 paragraph;

1 (iii) the resulting amount represents the total net Deferred Tax  
2 Deduction available over the ten-year period as described in  
3 subparagraph (E) of this paragraph.

4 (G) The deduction calculated under this paragraph shall not be  
5 adjusted as a result of any events happening subsequent to such  
6 calculation, including, but not limited to, any disposition or  
7 abandonment of assets. Such deduction shall be calculated without  
8 regard to the federal tax effect and shall not alter the tax basis of  
9 any asset. If the deduction under this section is greater than  
10 combined group entire net income, any excess deduction shall be  
11 carried forward and applied as a deduction to combined group entire  
12 net income in future privilege periods until fully utilized.

13 (H) Any combined group intending to claim a deduction under  
14 this paragraph shall file a statement with the director on or before  
15 July 1 of the year subsequent to the first privilege period for which  
16 a combined return is required. Such statement shall specify the  
17 total amount of the deduction which the combined group claims on  
18 such form and in such manner as prescribed by the director. No  
19 deduction shall be allowed under this paragraph for any privilege  
20 period except to the extent claimed on such timely filed statement  
21 in accordance with this paragraph.

22 (17) (A) In the case of a taxpayer that is a cannabis licensee,  
23 there shall be allowed as a deduction an amount equal to any  
24 expenditure that is eligible to be claimed as a federal income tax  
25 deduction but is disallowed because cannabis is a controlled  
26 substance under federal law, and income shall be determined  
27 without regard to section 280E of the Internal Revenue Code (26  
28 U.S.C. s.280E) for cannabis licensees.

29 (B) In the case of a taxpayer that is a cannabis licensee, there  
30 shall be allowed as a deduction an amount equal to any expenditure  
31 that would qualify as a specified research or experimental  
32 expenditure pursuant to section 174 of the Internal Revenue Code  
33 but is disallowed as a deduction for federal tax purposes because  
34 cannabis is a controlled substance under federal law. Any  
35 expenditure that is claimed as a deduction pursuant to this  
36 subparagraph may also be claimed as a qualified research expense  
37 for purposes of the credit allowed pursuant to section 1 of P.L.1993,  
38 c.175 (C.54:10A-5.24).

39 (C) For purposes of this paragraph, "licensee" means the same  
40 as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).

41 (l) "Real estate investment trust" shall mean any corporation,  
42 trust or association qualifying and electing to be taxed as a real  
43 estate investment trust under federal law.

44 (m) "Financial business corporation" shall mean any corporate  
45 enterprise which is (1) in substantial competition with the business  
46 of national banks and which (2) employs moneyed capital with the  
47 object of making profit by its use as money, through discounting  
48 and negotiating promissory notes, drafts, bills of exchange and

1 other evidences of debt; buying and selling exchange; making of or  
2 dealing in secured or unsecured loans and discounts; dealing in  
3 securities and shares of corporate stock by purchasing and selling  
4 such securities and stock without recourse, solely upon the order  
5 and for the account of customers; or investing and reinvesting in  
6 marketable obligations evidencing indebtedness of any person,  
7 copartnership, association or corporation in the form of bonds,  
8 notes or debentures commonly known as investment securities; or  
9 dealing in or underwriting obligations of the United States, any  
10 state or any political subdivision thereof, or of a corporate  
11 instrumentality of any of them. This shall include, without  
12 limitation of the foregoing, business commonly known as industrial  
13 banks, dealers in commercial paper and acceptances, sales finance,  
14 personal finance, small loan and mortgage financing businesses, as  
15 well as any other enterprise employing moneyed capital coming  
16 into competition with the business of national banks; provided that  
17 the holding of bonds, notes, or other evidences of indebtedness by  
18 individual persons not employed or engaged in the banking or  
19 investment business and representing merely personal investments  
20 not made in competition with the business of national banks, shall  
21 not be deemed financial business. Nor shall "financial business"  
22 include national banks, production credit associations organized  
23 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,  
24 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual  
25 insurance companies duly authorized to transact business in this  
26 State, security brokers or dealers or investment companies or  
27 bankers not employing moneyed capital coming into competition  
28 with the business of national banks, real estate investment trusts, or  
29 any of the following entities organized under the laws of this State:  
30 credit unions, savings banks, savings and loan and building and  
31 loan associations, pawnbrokers, and State banks and trust  
32 companies.

33 (n) "International banking facility" shall mean a set of asset and  
34 liability accounts segregated on the books and records of a  
35 depository institution, United States branch or agency of a foreign  
36 bank, or an Edge or Agreement Corporation that includes only  
37 international banking facility time deposits and international  
38 banking facility extensions of credit as such terms are defined in  
39 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the  
40 board of governors of the Federal Reserve System, 12 CFR Part  
41 204, effective December 3, 1981. In the event that the United  
42 States enacts a law, or the board of governors of the Federal  
43 Reserve System adopts a regulation which amends the present  
44 definition of international banking facility or of such facilities' time  
45 deposits or extensions of credit, the Commissioner of Banking and  
46 Insurance shall forthwith adopt regulations defining such terms in  
47 the same manner as such terms are set forth in the laws of the  
48 United States or the regulations of the board of governors of the

1 Federal Reserve System. The regulations of the Commissioner of  
2 Banking and Insurance shall thereafter provide the applicable  
3 definitions.

4 (o) "S corporation" means a corporation that has elected to be an  
5 "S corporation" pursuant to section 1361 of the federal Internal  
6 Revenue Code of 1986, 26 U.S.C. s.1361, for the taxable year.

7 (p) "New Jersey S corporation" means a taxpayer that has made  
8 a valid election to be an S corporation for federal tax purposes, and  
9 that has not made a valid election pursuant to subsection d. of  
10 section 20 of P.L.2022, c.133 (C.54:10A-5.22).

11 (q) "Public Utility" means "public utility" as defined in  
12 R.S.48:2-13.

13 (r) "Qualified investment partnership" means a partnership  
14 under this act that has more than 10 members or partners with no  
15 member or partner owning more than a 50% interest in the entity  
16 and that derives at least 90% of its gross income from dividends,  
17 interest, payments with respect to securities loans, and gains from  
18 the sale or other disposition of stocks or securities or foreign  
19 currencies or commodities or other similar income (including but  
20 not limited to gains from swaps, options, futures or forward  
21 contracts) derived with respect to its business of investing or  
22 trading in those stocks, securities, currencies or commodities, but  
23 "investment partnership" shall not include a "dealer in securities"  
24 within the meaning of section 1236 of the federal Internal Revenue  
25 Code of 1986, 26 U.S.C. s.1236.

26 (s) "Savings institution" means a state or federally chartered  
27 building and loan association, savings and loan association, or  
28 savings bank.

29 (t) "Partnership" means an entity classified as a partnership for  
30 federal income tax purposes.

31 (u) "Prior net operating loss conversion carryover" means a net  
32 operating loss incurred in a privilege period ending prior to July 31,  
33 2019 and converted from a pre-allocation net operating loss to a  
34 post-allocation net operating loss as follows:

35 (1) As used in this subsection:

36 "Base year" means the last privilege period ending prior to July  
37 31, 2019.

38 "Base year BAF" means the taxpayer's business allocation factor  
39 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-  
40 6 through C.54:10A-10) for purposes of calculating entire net  
41 income for the base year, as such section was in effect for the last  
42 privilege period ending prior to July 31, 2019.

43 "UNOL" means the unabsorbed portion of net operating loss as  
44 calculated under paragraph (6) of subsection (k) of this section as  
45 such paragraph was in effect for the last privilege period ending  
46 prior to July 31, 2019, that was not deductible in previous privilege  
47 periods and was eligible for carryover on the last day of the base  
48 year subject to the limitations for deduction under such subsection,

1 including any net operating loss sustained by the taxpayer during  
2 the base year.

3 (2) The prior net operating loss conversion carryover shall be  
4 calculated as follows:

5 (A) The taxpayer shall first calculate the tax value of its UNOL  
6 for the base year and for each preceding privilege period for which  
7 there is a UNOL. The value of the UNOL for each privilege period  
8 is equal to the product of (I) the amount of the taxpayer's UNOL for  
9 a privilege period, and (II) the taxpayer's base year BAF. This result  
10 shall equal the taxpayer's prior net operating loss conversion  
11 carryover.

12 (B) The taxpayer shall continue to carry over its prior net  
13 operating loss conversion carryover to offset its allocated entire net  
14 income as provided in sections 6 through 10 of P.L.1945, c.162  
15 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on  
16 and after July 31, 2019. Such carryover periods shall not exceed  
17 the twenty privilege periods following the privilege period of the  
18 initial loss. The entire amount of the prior net operating loss  
19 conversion carryover for any privilege period shall be carried to the  
20 earliest of the privilege periods to which the loss may be carried.  
21 The portion of the prior net operating loss conversion carryover  
22 which shall be carried to each of the other privilege periods shall be  
23 the excess, if any, of the amount of the prior net operating loss  
24 conversion carryover over the sum of the entire net income,  
25 computed without the exclusions permitted in paragraphs (4) and  
26 (5) of subsection (k) of this section allocated to this State.

27 (C) The prior net operating loss conversion carryover computed  
28 under this subsection shall be applied against the entire net income  
29 allocated to this State before the net operating loss carryover  
30 computed under subsection (v) of this section.

31 (v) "Net operating loss deduction" means the amount allowed as  
32 a deduction for the net operating loss carryover to the privilege  
33 period, calculated as follows:

34 (1) Net operating loss carryover. A net operating loss for any  
35 privilege period ending on or after July 31, 2019, shall be a net  
36 operating loss carryover to each of the twenty privilege periods  
37 following the period of the loss. The entire amount of the net  
38 operating loss for any privilege period shall be carried to the earliest  
39 of the privilege periods to which the loss may be carried. The  
40 portion of the loss which shall be carried to each of the other  
41 privilege periods shall be the excess, if any, of the amount of the  
42 loss over the sum of the entire net income, computed without the  
43 exclusions permitted in paragraphs (4) and (5) of subsection (k) of  
44 this section allocated to this State.

45 (2) Net operating loss. For purposes of this paragraph the term  
46 "net operating loss" means the excess of the deductions over the  
47 gross income used in computing entire net income, without regard  
48 to any net operating loss carryover, and computed without the

1 exclusions in paragraphs (4) and (5) of subsection (k) of this  
2 section, allocated to this State pursuant to sections 6 through 10 of  
3 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

4 (3) Reduction for discharge of indebtedness. A net operating  
5 loss for any privilege period ending on or after July 31, 2019, and  
6 any net operating loss carryover to such privilege period, shall be  
7 reduced by the amount excluded from federal taxable income under  
8 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of  
9 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108,  
10 for the privilege period of the discharge of indebtedness.

11 (4) A net operating loss carryover shall not include any net  
12 operating loss incurred during any privilege period ending prior to  
13 July 31, 2019.

14 (5) Change in ownership. Where there is a change in 50% or  
15 more of the ownership of a corporation because of redemption or  
16 sale of stock and the corporation changes the trade or business  
17 giving rise to the loss, no net operating loss sustained before the  
18 changes may be carried over to be deducted from income earned  
19 after such changes. In addition, where the facts support the premise  
20 that the corporation was acquired under any circumstances for the  
21 primary purpose of the use of its net operating loss carryover, the  
22 director may disallow the carryover; provided, however, this  
23 paragraph shall not apply between members of a combined group  
24 reported on a New Jersey combined return.

25 (w) "Taxable net income" means entire net income allocated to  
26 this State as calculated pursuant to sections 6 through 8 of  
27 P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as modified by  
28 subtracting any prior net operating loss conversion carryforward  
29 calculated pursuant to subsection (u) of this section, and any net  
30 operating loss calculated pursuant to subsection (v) of this section.

31 (x) "Affiliated group" means, for purposes of section 23 of  
32 P.L.2018, c.48 (C.54:10A-4.11), an affiliated group as defined in  
33 section 1504 of the federal Internal Revenue Code, 26 U.S.C.  
34 s.1504, except such affiliated group shall include all U.S. domestic  
35 corporations that are commonly owned, directly or indirectly, by  
36 any member of such affiliated group, without regard to whether the  
37 affiliated group includes (1) corporations included in more than one  
38 federal consolidated return, (2) corporations engaged in one or more  
39 unitary businesses, or (3) corporations that are not engaged in a  
40 unitary business with any other member of the affiliated group.

41 For purposes of this subsection:

42 "U.S. domestic corporations" means: (1) business entities  
43 wherever incorporated or formed that are U.S. domestic  
44 corporations, are deemed to be, or are treated as U.S. domestic  
45 corporations under the provisions of the federal Internal Revenue  
46 Code; or (2) any entities incorporated or formed under the laws of a  
47 foreign nation that are required to file federal tax returns if such

1 entities have effectively connected income within the meaning of  
2 the federal Internal Revenue Code; and

3 "Commonly owned" means that more than 50 percent of the  
4 voting control of each member of an affiliated group is directly or  
5 indirectly owned by a common owner or owners, either corporate or  
6 non-corporate, whether or not the owner or owners are members of  
7 the affiliated group. Whether voting control is indirectly owned  
8 shall be determined in accordance with section 318 of the federal  
9 Internal Revenue Code (26 U.S.C. s.318).

10 (y) "Combinable captive insurance company" means an entity  
11 that is treated as an association taxable as a corporation under the  
12 federal Internal Revenue Code:

13 (1) more than 50% of the voting stock of which is owned or  
14 controlled, directly or indirectly, by a single entity that is treated as  
15 an association taxable as a corporation under the federal Internal  
16 Revenue Code, and not exempt from federal income tax;

17 (2) that is licensed as a captive insurance company under the  
18 laws of this State or another jurisdiction;

19 (3) whose business includes providing, directly and indirectly,  
20 insurance or reinsurance covering the risks of its parent, members  
21 of its affiliated group, or both; and

22 (4) 50% or less of whose gross receipts for the privilege period  
23 consist of premiums from arrangements that constitute insurance for  
24 federal income tax purposes.

25 A combinable captive insurance company shall not be exempt  
26 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive  
27 insurance company that does not meet the definition of combinable  
28 captive insurance company shall be excluded as provided in  
29 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and  
30 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

31 For purposes of this definition:

32 "Affiliated group" shall have the same meaning as that term is  
33 given by section 1504 of the federal Internal Revenue Code, 26  
34 U.S.C. s.1504, except that the term "common parent corporation" as  
35 used in section 1504 of the federal Internal Revenue Code, 26  
36 U.S.C. s.1504, shall mean any person, as defined in section 7701 of  
37 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references  
38 to "at least 80%" in section 1504 of the federal Internal Revenue  
39 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section  
40 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall  
41 be read without regard to the exclusions provided for in subsection  
42 (b) of that section.

43 "Gross receipts" includes the amounts included in gross receipts  
44 for purposes of paragraph (15) of subsection (c) of section 501 of  
45 the federal Internal Revenue Code, 26 U.S.C. s.501, except that  
46 those amounts also include all premiums.

47 "Premiums" includes consideration for annuity contracts and  
48 excludes any part of the consideration for insurance, reinsurance, or

1 annuity contracts that do not provide bona fide insurance,  
2 reinsurance, or annuity benefits.

3 (z) "Combined group" means the group of all companies that  
4 have common ownership and are engaged in a unitary business,  
5 where at least one company is subject to tax under this chapter, and  
6 shall include all business entities, except as provided for under any  
7 section of the Corporation Business Tax Act (1945), P.L.1945,  
8 c.162 (C.54:10A-1 et seq.).

9 A combined group shall be treated, for privilege periods ending  
10 on and after July 31, 2020, as one taxpayer for purposes of  
11 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162  
12 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for  
13 the income derived from the unitary business; provided however,  
14 with regard to the surtax imposed pursuant to section 1 of P.L.2018,  
15 c.48 (C.54:10A-5.41) and for that purpose only, the portion of  
16 income that is attributable to a member which is a public utility  
17 exempt from the surtax shall not be included when computing the  
18 surtax due.

19 (aa) "Common ownership" means that more than 50% of the  
20 voting control of each member of a combined group is directly or  
21 indirectly owned by a common owner or owners, either corporate or  
22 non-corporate, whether or not the owner or owners are members of  
23 the combined group. Whether voting control is indirectly owned  
24 shall be determined in accordance with section 318 of the federal  
25 Internal Revenue Code, 26 U.S.C. s.318.

26 (bb) "Group privilege period" means, if two or more members in  
27 the combined group file in the same federal consolidated tax return,  
28 the same income year as that used on the federal consolidated tax  
29 return and, in all other cases, the privilege period of the managerial  
30 member.

31 (cc) "Managerial member" means if the combined group has a  
32 common parent corporation and that common parent corporation is  
33 a taxable member, the managerial member shall be the common  
34 parent corporation. In other cases, the combined group shall select  
35 a taxable member as its managerial member or, in the discretion of  
36 the director or upon failure of the combined group to select its  
37 managerial member, the director shall designate a taxable member  
38 of the combined group as managerial member.

39 (dd) "Member" means a business entity that is a part of a  
40 combined group.

41 A corporation exempt pursuant to section 3 of P.L.1945, c.162  
42 (C.54:10A-3) from the tax imposed by P.L.1945, c.162 (C.54:10A-1  
43 et seq.) shall not be a member of a combined group.

44 (ee) "Nontaxable member" means a member that is: (i) not  
45 subject to tax pursuant to the Corporation Business Tax Act (1945),  
46 P.L.1945, c.162 (C.54:10A-1 et seq.); or (ii) (deleted by  
47 amendment, P.L.2020, c.118 (C.54:10A-5.46 et al.).

1 (ff) "Taxable member" means a member that is subject to tax  
2 pursuant to the Corporation Business Tax Act (1945), P.L.1945,  
3 c.162 (C.54:10A-1 et seq.).

4 A New Jersey S corporation shall only be included as a taxable  
5 member of a combined group filing a New Jersey combined return  
6 if the New Jersey S Corporation elects to be included as a member  
7 and taxed at the same rate as the other members of the combined  
8 group. A New Jersey S corporation that does not elect to be  
9 included shall be excluded as a member of the combined return and  
10 shall file a separate return.

11 (gg) "Unitary business" means a single economic enterprise that  
12 is made up either of separate parts of a single business entity or of a  
13 group of business entities under common ownership that are  
14 sufficiently interdependent, integrated, and interrelated through  
15 their activities so as to provide a synergy and mutual benefit that  
16 produces a sharing or exchange of value among them and a  
17 significant flow of value among the separate parts. "Unitary  
18 business" shall be construed to the broadest extent permitted under  
19 the Constitution of the United States. A business conducted by a  
20 partnership which is in a unitary business with the combined group  
21 shall be treated as the business of the partners that are members of  
22 the combined group, whether the partnership interest is held directly  
23 or indirectly through a series of partnerships, to the extent of a  
24 partner's distributive share of partnership income. The amount of  
25 partnership income to be included in the partner's entire net income  
26 shall be determined in accordance with subsection a. of section 3 of  
27 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of  
28 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business  
29 conducted directly or indirectly by one corporation is unitary with  
30 that portion of a business conducted by another corporation through  
31 its direct or indirect interest in a partnership.<sup>2</sup>

32 (cf: P.L.2022, c.133, s.19)

33  
34 <sup>2</sup>[2. Section 12 of P.L.1993, c.173 (C.54A:5-10) is amended to  
35 read as follows:

36 12. For the purposes of the "New Jersey Gross Income Tax Act,"  
37 N.J.S.54A:1-1 et seq.:

38 "New Jersey S corporation" means a corporation that is an S  
39 corporation; which has made a valid election pursuant to section 3  
40 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
41 corporation continuously since the effective date of the valid  
42 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-  
43 5.22).

44 "Pro rata share" means the portion of any items attributable to an  
45 S corporation shareholder for a taxable year determined in the  
46 manner provided in, and subject to any election made under  
47 subsection (a) of section 1377 or subsection (e) of section 1362 of

1 the federal Internal Revenue Code of 1986, 26 U.S.C. s.1377 and  
2 s.1362.

3 "Pro rata share of S corporation income" means the sum of the  
4 shareholder's proportionate share of:

5 For a New Jersey S corporation, the S corporation income  
6 allocated to this State of all New Jersey S corporations; and the S  
7 corporation income not allocated to this State.

8 "S corporation" means a corporation included in the definition of  
9 an "S corporation" pursuant to section 1361 of the federal Internal  
10 Revenue Code of 1986, 26 U.S.C. s.1361.

11 "S corporation income" means the net of an S corporation's items  
12 of income, loss or deduction taken into account by the shareholder  
13 in the manner provided in section 1366 of the federal Internal  
14 Revenue Code of 1986, 26 U.S.C. s.1366; provided however that:

15 a. S corporation income shall be determined without the  
16 exclusion, deduction or credit of:

17 (1) any dividend exclusion or deduction otherwise allowed  
18 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,  
19 c.162 (C.54:10A-4);

20 (2) taxes paid or accrued to the United States, a possession or  
21 territory of the United States, a state including this State, a political  
22 subdivision thereof, or the District of Columbia on or measured by  
23 profits or income, or business presence or business activity, of the  
24 corporation;

25 (3) any income taxes paid or accrued to the United States, a  
26 possession or territory of the United States, a state including this  
27 State, a political subdivision thereof, or the District of Columbia  
28 paid or accrued by the S corporation on behalf of, or in satisfaction  
29 of the liabilities of, shareholders of the corporation;

30 (4) interest income on obligations of any state other than this  
31 State, or of a political subdivision thereof, or of the federal  
32 government, except as deducted pursuant to subsection b. of this  
33 section; or

34 (5) interest on indebtedness incurred or continued, expenses  
35 paid and incurred to purchase, carry, manage or conserve, and  
36 expenses of collection of the income or gain from obligations the  
37 income or gain from which is deductible pursuant to subsection b.  
38 of this definition; and

39 b. S corporation income shall be determined after deduction of:

40 (1) any gains or income derived from obligations which are  
41 referred to in N.J.S.54A:6-14 or from securities which evidence  
42 ownership in a qualified investment fund as defined in section 2 of  
43 P.L.1987, c.310 (C.54A:6-14.1), and any interest excluded from  
44 gross income pursuant to N.J.S.54A:6-14, or distributions excluded  
45 from income pursuant to section 2 of P.L.1987, c.310 (C.54A:6-  
46 14.1); and

47 (2) (a) in the case of a taxpayer that is a cannabis licensee, an  
48 amount equal to any expenditure that is eligible to be claimed as a

1 federal income tax deduction but is disallowed because cannabis is  
2 a controlled substance under federal law;

3 (b) <sup>1</sup>subparagraph (a) of this paragraph shall only apply to a  
4 taxpayer with less than \$15,000,000 of gross receipts, as gross  
5 receipts are calculated in accordance with the gross receipts test of  
6 subsection (c) of section 448 of the Internal Revenue Code (26  
7 U.S.C. s.448), but without regard to the \$25,000,000 maximum or  
8 the adjustment for inflation of that subsection;

9 (c) <sup>1</sup>for purposes of this paragraph, "licensee" means the same  
10 as defined in section 3 of <sup>1</sup>[P.L. c. (C. ) (pending before the  
11 Legislature as Assembly Bill No. 21 and Senate Bill No. 21 of  
12 2020)] P.L.2021, c.16 (C.24:6I-33)<sup>1</sup>; and

13 c. The character of any S corporation item taken into account  
14 by a shareholder of an S corporation shall be determined as if such  
15 items were received or incurred by the S corporation and not its  
16 shareholder.

17 "S corporation income allocated to this State" means that portion  
18 of the S corporation income that is allocated to this State by the  
19 allocation factor of the corporation for the fiscal or calendar  
20 accounting period pursuant to sections 6 through 10 of P.L.1945,  
21 c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax  
22 imposed pursuant to paragraph (3) of subsection (c) of section 5 of  
23 P.L.1945, c.162 (C. 54:10A-5).

24 "S corporation income not allocated to this State" means S  
25 corporation income less S corporation income allocated to this  
26 State.

27 (cf: P.L.1993, c.173, s.12) <sup>2</sup>

28

29 <sup>2</sup>2. Section 12 of P.L.1993, c.173 (C.54A:5-10) is amended to  
30 read as follows:

31 12. For the purposes of the "New Jersey Gross Income Tax  
32 Act," N.J.S.54A:1-1 et seq.:

33 "New Jersey S corporation" means a corporation that has made a  
34 valid election to be an S corporation for federal tax purposes for the  
35 taxable year, and that has not made a valid election pursuant to  
36 subsection d. of section 20 of P.L.2022, c.133 (C.54:10A-5.22).

37 "Pro rata share" means the portion of any items attributable to an  
38 S corporation shareholder for a taxable year determined in the  
39 manner provided in, and subject to any election made under  
40 subsection (a) of section 1377 or subsection (e) of section 1362 of  
41 the federal Internal Revenue Code of 1986, 26 U.S.C. s.1377 and  
42 s.1362.

43 "Pro rata share of S corporation income" means the sum of the  
44 shareholder's proportionate share of:

45 For a New Jersey S corporation, the S corporation income  
46 allocated to this State of all New Jersey S corporations; and the S  
47 corporation income not allocated to this State.

1 "S corporation" means a corporation that has elected to be an "S  
2 corporation" pursuant to section 1361 of the federal Internal  
3 Revenue Code, 26 U.S.C. s.1361, for the taxable year.

4 "S corporation income" means the net of an S corporation's items  
5 of income, loss or deduction taken into account by the shareholder  
6 in the manner provided in section 1366 of the federal Internal  
7 Revenue Code of 1986, 26 U.S.C. s.1366; provided however that:

8 a. S corporation income shall be determined without the  
9 exclusion, deduction or credit of:

10 (1) any dividend exclusion or deduction otherwise allowed  
11 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,  
12 c.162 (C.54:10A-4);

13 (2) taxes paid or accrued to the United States, a possession or  
14 territory of the United States, a state including this State, a political  
15 subdivision thereof, or the District of Columbia on or measured by  
16 profits or income, or business presence or business activity, of the  
17 corporation;

18 (3) any income taxes paid or accrued to the United States, a  
19 possession or territory of the United States, a state including this  
20 State, a political subdivision thereof, or the District of Columbia  
21 paid or accrued by the S corporation on behalf of, or in satisfaction  
22 of the liabilities of, shareholders of the corporation;

23 (4) interest income on obligations of any state other than this  
24 State, or of a political subdivision thereof, or of the federal  
25 government, except as deducted pursuant to subsection b. of this  
26 section; or

27 (5) interest on indebtedness incurred or continued, expenses  
28 paid and incurred to purchase, carry, manage or conserve, and  
29 expenses of collection of the income or gain from obligations the  
30 income or gain from which is deductible pursuant to subsection b.  
31 of this definition; and

32 b. S corporation income shall be determined after deduction of:

33 (1) any gains or income derived from obligations which are  
34 referred to in N.J.S.54A:6-14 or from securities which evidence  
35 ownership in a qualified investment fund as defined in section 2 of  
36 P.L.1987, c.310 (C.54A:6-14.1), and any interest excluded from  
37 gross income pursuant to N.J.S.54A:6-14, or distributions excluded  
38 from income pursuant to section 2 of P.L.1987, c.310 (C.54A:6-  
39 14.1); and

40 (2) (a) in the case of a taxpayer that is a cannabis licensee, an  
41 amount equal to any expenditure that is eligible to be claimed as a  
42 federal income tax deduction but is disallowed because cannabis is  
43 a controlled substance under federal law;

44 (b) for purposes of this paragraph, "licensee" means the same as  
45 that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33); and

46 c. The character of any S corporation item taken into account  
47 by a shareholder of an S corporation shall be determined as if such

1 items were received or incurred by the S corporation and not its  
2 shareholder.

3 "S corporation income allocated to this State" means that portion  
4 of the S corporation income that is allocated to this State by the  
5 allocation factor of the corporation for the fiscal or calendar  
6 accounting period pursuant to sections 6 through 10 of P.L.1945,  
7 c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax  
8 imposed pursuant to paragraph (3) of subsection (c) of section 5 of  
9 P.L.1945, c.162 (C. 54:10A-5).

10 "S corporation income not allocated to this State" means S  
11 corporation income less S corporation income allocated to this  
12 State.<sup>2</sup>

13 (cf: P.L.2022, c.133, s.22)

14

15 3. (New section) <sup>2</sup>a. For cannabis licensees,<sup>2</sup> New Jersey gross  
16 income under subsections b. and k. of N.J.S.54A:5-1 shall be  
17 determined without regard to section 280E of the Internal Revenue  
18 Code (26 U.S.C. <sup>2</sup>s. <sup>2</sup>280E).

19 <sup>2</sup>b. For purposes of this section, "licensee" means the same as  
20 that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33).<sup>2</sup>

21

22 4. (New section) Notwithstanding the provisions of the  
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
24 1 et seq.), to the contrary, the director may adopt, immediately,  
25 upon filing with the Office of Administrative Law, regulations that  
26 the director deems necessary to implement the provisions of P.L. ,  
27 c. (C. ) (pending before the Legislature as this bill), which  
28 regulations shall be effective for a period not to exceed 360 days  
29 from the date of the filing. The director may thereafter amend,  
30 adopt, or readopt the regulations in accordance with the  
31 requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

32

33 5. This act shall take effect immediately <sup>1</sup>or upon the  
34 enactment into law of P.L. , c. (C. ) (pending before the  
35 Legislature as Assembly Bill No. 21 and Senate Bill No. 21 of  
36 2020), whichever occurs later and shall apply to taxable years  
37 beginning on and after January 1 <sup>2</sup>following enactment<sup>1</sup> , 2023<sup>2</sup>.

38

39

40

41

42 Decouples State tax provisions from federal prohibition on  
43 cannabis business deductions.

# ASSEMBLY, No. 3946

## STATE OF NEW JERSEY 220th LEGISLATURE

INTRODUCED MAY 12, 2022

**Sponsored by:**

**Assemblywoman ANNETTE QUIJANO**

**District 20 (Union)**

**Assemblyman CLINTON CALABRESE**

**District 36 (Bergen and Passaic)**

**SYNOPSIS**

Decouples State tax provisions from federal prohibition on cannabis business deductions, but only for businesses with less than \$15 million of gross receipts.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 9/29/2022)

A3946 QUIJANO, CALABRESE

2

1 AN ACT concerning business deductions incurred in carrying on a  
2 cannabis business, amending P.L.1945, c.162 and P.L.1993,  
3 c.173, and supplementing Title 54A of the New Jersey Statutes.

4  
5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to  
9 read as follows:

10 4. For the purposes of this act, unless the context requires a  
11 different meaning:

12 (a) "Commissioner" or "director" shall mean the Director of the  
13 Division of Taxation of the State Department of the Treasury.

14 (b) "Allocation factor" shall mean the proportionate part of a  
15 taxpayer's net worth or entire net income used to determine a  
16 measure of its tax under this act.

17 (c) "Corporation" shall mean any corporation, joint-stock  
18 company or association and any business conducted by a trustee or  
19 trustees wherein interest or ownership is evidenced by a certificate  
20 of interest or ownership or similar written instrument, any other  
21 entity classified as a corporation for federal income tax purposes,  
22 and any state or federally chartered building and loan association or  
23 savings and loan association.

24 (d) "Net worth" shall mean the aggregate of the values disclosed  
25 by the books of the corporation for (1) issued and outstanding  
26 capital stock, (2) paid-in or capital surplus, (3) earned surplus and  
27 undivided profits, and (4) surplus reserves which can reasonably be  
28 expected to accrue to holders or owners of equitable shares, not  
29 including reasonable valuation reserves, such as reserves for  
30 depreciation or obsolescence or depletion. Notwithstanding the  
31 foregoing, net worth shall not include any deduction for the amount  
32 of the excess depreciation described in paragraph (2) (F) of  
33 subsection (k) of this section. The foregoing aggregate of values  
34 shall be reduced by 50% of the amount disclosed by the books of  
35 the corporation for investment in the capital stock of one or more  
36 subsidiaries, which investment is defined as ownership (1) of at  
37 least 80% of the total combined voting power of all classes of stock  
38 of the subsidiary entitled to vote and (2) of at least 80% of the total  
39 number of shares of all other classes of stock except nonvoting  
40 stock which is limited and preferred as to dividends. In the case of  
41 investment in an entity organized under the laws of a foreign  
42 country, the foregoing requisite degree of ownership shall effect a  
43 like reduction of such investment from the net worth of the  
44 taxpayer, if the foreign entity is considered a corporation for any  
45 purpose under the United States federal income tax laws, such as

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 (but not by way of sole examples) for the purpose of supplying  
2 deemed paid foreign tax credits or for the purpose of status as a  
3 controlled foreign corporation. In calculating the net worth of a  
4 taxpayer entitled to reduction for investment in subsidiaries, the  
5 amount of liabilities of the taxpayer shall be reduced by such  
6 proportion of the liabilities as corresponds to the ratio which the  
7 excluded portion of the subsidiary values bears to the total assets of  
8 the taxpayer.

9 In the case of banking corporations which have international  
10 banking facilities as defined in subsection (n), the foregoing  
11 aggregate of values shall also be reduced by retained earnings of the  
12 international banking facility. Retained earnings means the  
13 earnings accumulated over the life of such facility and shall not  
14 include the distributive share of dividends paid and federal income  
15 taxes paid or payable during the tax year.

16 If in the opinion of the director, the corporation's books do not  
17 disclose fair valuations the director may make a reasonable  
18 determination of the net worth which, in his opinion, would reflect  
19 the fair value of the assets, exclusive of subsidiary investments as  
20 defined aforesaid, carried on the books of the corporation, in  
21 accordance with sound accounting principles, and such  
22 determination shall be used as net worth for the purpose of this act.

23 (e) (Deleted by amendment, P.L.1998, c.114.)

24 (f) "Investment company" shall mean any corporation whose  
25 business during the period covered by its report consisted, to the  
26 extent of at least 90% thereof of holding, investing and reinvesting  
27 in stocks, bonds, notes, mortgages, debentures, patents, patent rights  
28 and other securities for its own account, but this shall not include  
29 any corporation which: (1) is a merchant or a dealer of stocks,  
30 bonds and other securities, regularly engaged in buying the same  
31 and selling the same to customers; or (2) had less than 90% of its  
32 average gross assets in New Jersey, at cost, invested in stocks,  
33 bonds, debentures, mortgages, notes, patents, patent rights or other  
34 securities or consisting of cash on deposit during the period covered  
35 by its report; or (3) is a banking corporation, a savings institution,  
36 or a financial business corporation as defined in the Corporation  
37 Business Tax Act.

38 (g) "Regulated investment company" shall mean any corporation  
39 which for a period covered by its report, is registered and regulated  
40 under the Investment Company Act of 1940 (54 Stat. 789), as  
41 amended.

42 (h) "Taxpayer" shall mean any corporation, any combined group  
43 filing a mandatory or elective New Jersey combined return, and any  
44 partnership required, or consenting, to report or to pay taxes,  
45 interest or penalties under this act. "Taxpayer" shall not include a  
46 partnership that is listed on a United States national stock exchange.

1 (i) "Fiscal year" shall mean an accounting period ending on any  
2 day other than the last day of December on the basis of which the  
3 taxpayer is required to report for federal income tax purposes.

4 (j) Except as herein provided, "privilege period" shall mean the  
5 calendar or fiscal accounting period for which a tax is payable  
6 under this act.

7 (k) "Entire net income" shall mean total net income from all  
8 sources, whether within or without the United States, and shall  
9 include the gain derived from the employment of capital or labor, or  
10 from both combined, as well as profit gained through a sale or  
11 conversion of capital assets.

12 For the purpose of this act, the amount of a taxpayer's entire net  
13 income shall be deemed prima facie to be equal in amount to the  
14 taxable income, before net operating loss deduction and special  
15 deductions, which the taxpayer is required to report, or, if the  
16 taxpayer is classified as a partnership for federal tax purposes,  
17 would otherwise be required to report, to the United States Treasury  
18 Department for the purpose of computing its federal income tax,  
19 provided however, that in the determination of such entire net  
20 income,

21 (1) Entire net income shall exclude for the periods set forth in  
22 paragraph (2)(F)(i) of this subsection, any amount, except with  
23 respect to qualified mass commuting vehicles as described in  
24 section 168(f)(8)(D)(v) of the Internal Revenue Code as in effect  
25 immediately prior to January 1, 1984, which is included in a  
26 taxpayer's federal taxable income solely as a result of an election  
27 made pursuant to the provisions of paragraph (8) of that section.

28 (2) Entire net income shall be determined without the exclusion,  
29 deduction or credit of:

30 (A) The amount of any exemption or credit allowed in any law  
31 of the United States imposing any tax on or measured by the income  
32 of corporations.

33 (B) Any part of any income from dividends or interest on any  
34 kind of stock, securities or indebtedness, except as provided in  
35 paragraph (5) of subsection (k) of this section.

36 (C) Taxes paid or accrued to the United States, a possession or  
37 territory of the United States, a state, a political subdivision thereof,  
38 or the District of Columbia, or to any foreign country, state,  
39 province, territory or subdivision thereof, on or measured by profits  
40 or income, or business presence or business activity, or the tax  
41 imposed by this act, or any tax paid or accrued with respect to  
42 subsidiary dividends excluded from entire net income as provided  
43 in paragraph (5) of subsection (k) of this section.

44 (D) (Deleted by amendment, P.L.1985, c.143.)

45 (E) (Deleted by amendment, P.L.1995, c.418.)

46 (F) (i) The amount by which depreciation reported to the United  
47 States Treasury Department for property placed in service on and  
48 after January 1, 1981, but prior to taxpayer fiscal or calendar

1 accounting years beginning on and after the effective date of  
2 P.L.1993, c.172, for purposes of computing federal taxable income  
3 in accordance with section 168 of the Internal Revenue Code in  
4 effect after December 31, 1980, exceeds the amount of depreciation  
5 determined in accordance with the Internal Revenue Code  
6 provisions in effect prior to January 1, 1981, but only with respect  
7 to a taxpayer's accounting period ending after December 31, 1981;  
8 provided, however, that where a taxpayer's accounting period  
9 begins in 1981 and ends in 1982, no modification shall be required  
10 with respect to this paragraph (F) for the report filed for such period  
11 with respect to property placed in service during that part of the  
12 accounting period which occurs in 1981. The provisions of this  
13 subparagraph shall not apply to assets placed in service prior to  
14 January 1, 1998 of a gas, gas and electric, and electric public utility  
15 that was subject to the provisions of P.L.1940, c.5 (C.54:30A-49 et  
16 seq.) prior to 1998.

17 (ii) For the periods set forth in subparagraph (F)(i) of paragraph  
18 (2) of this subsection, any amount, except with respect to qualified  
19 mass commuting vehicles as described in section 168(f)(8)(D)(v) of  
20 the Internal Revenue Code as in effect immediately prior to January  
21 1, 1984, which the taxpayer claimed as a deduction in computing  
22 federal income tax pursuant to a qualified lease agreement under  
23 paragraph (8) of that section.

24 The director shall promulgate rules and regulations necessary to  
25 carry out the provisions of this section, which rules shall provide,  
26 among others, the manner in which the remaining life of property  
27 shall be reported.

28 (G) (i) The amount of any civil, civil administrative, or criminal  
29 penalty or fine, including a penalty or fine under an administrative  
30 consent order, assessed and collected for a violation of a State or  
31 federal environmental law, an administrative consent order, or an  
32 environmental ordinance or resolution of a local governmental  
33 entity, and any interest earned on the penalty or fine, and any  
34 economic benefits having accrued to the violator as a result of a  
35 violation, which benefits are assessed and recovered in a civil, civil  
36 administrative, or criminal action, or pursuant to an administrative  
37 consent order. The provisions of this paragraph shall not apply to a  
38 penalty or fine assessed or collected for a violation of a State or  
39 federal environmental law, or local environmental ordinance or  
40 resolution, if the penalty or fine was for a violation that resulted  
41 from fire, riot, sabotage, flood, storm event, natural cause, or other  
42 act of God beyond the reasonable control of the violator, or caused  
43 by an act or omission of a person who was outside the reasonable  
44 control of the violator.

45 (ii) The amount of treble damages paid to the Department of  
46 Environmental Protection pursuant to subsection a. of section 7 of  
47 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
48 department in removing, or arranging for the removal of, an

1 unauthorized discharge upon failure of the discharger to comply  
2 with a directive from the department to remove, or arrange for the  
3 removal of, the discharge.

4 (H) The amount of any sales and use tax paid by a utility vendor  
5 pursuant to section 71 of P.L.1997, c.162.

6 (I) Interest paid, accrued or incurred for the privilege period to  
7 a related member, as defined in section 5 of P.L.2002, c.40  
8 (C.54:10A-4.4), except that a deduction shall be permitted to the  
9 extent that the taxpayer establishes by clear and convincing  
10 evidence, as determined by the director, that: (i) a principal purpose  
11 of the transaction giving rise to the payment of the interest was not  
12 to avoid taxes otherwise due under Title 54 of the Revised Statutes  
13 or Title 54A of the New Jersey Statutes, (ii) the interest is paid  
14 pursuant to arm's length contracts at an arm's length rate of interest,  
15 and (iii)(aa) the related member was subject to a tax on its net  
16 income or receipts in this State or another state or possession of the  
17 United States or in a foreign nation, (bb) a measure of the tax  
18 includes the interest received from the related member, and (cc) the  
19 rate of tax applied to the interest received by the related member is  
20 equal to or greater than a rate three percentage points less than the  
21 rate of tax applied to taxable interest by this State pursuant to  
22 section 5 of P.L.1945, c.162 (C.54:10A-5).

23 A deduction shall also be permitted if the taxpayer establishes by  
24 clear and convincing evidence, as determined by the director, that  
25 the disallowance of a deduction is unreasonable, or the taxpayer and  
26 the director agree in writing to the application or use of an  
27 alternative method of apportionment under section 8 of P.L.1945,  
28 c.162 (C.54:10A-8); nothing in this subsection shall be construed to  
29 limit or negate the director's authority to otherwise enter into  
30 agreements and compromises otherwise allowed by law.

31 A deduction shall also be permitted to the extent that the  
32 taxpayer establishes by a preponderance of the evidence, as  
33 determined by the director, that the interest is directly or indirectly  
34 paid, accrued or incurred to (i) a related member in a foreign nation  
35 which has in force a comprehensive income tax treaty with the  
36 United States and the related member (aa) was subject to tax in the  
37 foreign nation on a tax base that included the payment paid,  
38 accrued, or incurred; and (bb) under which the related member's  
39 income received from the transaction was taxed at an effective tax  
40 rate equal to or greater than a rate of three percentage points less  
41 than the rate of tax applied to taxable interest by the State of New  
42 Jersey pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5),  
43 provided however that the taxpayer shall disclose on its return for  
44 the privilege period the name of the related member, the amount of  
45 the interest, the relevant foreign nation, and such other information  
46 as the director may prescribe or (ii) to an independent lender and  
47 the taxpayer guarantees the debt on which the interest is required.  
48 The adjustments required by this subparagraph shall not apply to

1 transactions between related members included in a combined  
2 group reported on a New Jersey combined return.

3 (J) (i) Amounts deducted for federal tax purposes pursuant to  
4 section 199 of the federal Internal Revenue Code of 1986, 26  
5 U.S.C. s.199, except that this exclusion shall not apply to amounts  
6 deducted pursuant to that section that are exclusively based upon  
7 domestic production gross receipts of the taxpayer which are  
8 derived only from any lease, rental, license, sale, exchange, or other  
9 disposition of qualifying production property which the taxpayer  
10 demonstrates to the satisfaction of the director was manufactured or  
11 produced by the taxpayer in whole or in significant part within the  
12 United States but not qualified production property that was grown  
13 or extracted by the taxpayer. "Manufactured or produced" as used  
14 in this paragraph shall be limited to performance of an operation or  
15 series of operations the object of which is to place items of tangible  
16 personal property in a form, composition, or character different  
17 from that in which they were acquired. The change in form,  
18 composition, or character shall be a substantial change, and result in  
19 a transformation of property into a different or substantially more  
20 usable product.

21 (ii) For privilege periods beginning after December 31, 2017,  
22 notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-1 et  
23 seq.) or any other law to the contrary, for the purposes of  
24 determining the amount of income pursuant to P.L.1945, c.162  
25 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be  
26 taken as a deduction pursuant to section 199A of the Internal  
27 Revenue Code (26 U.S.C. s.199A).

28 (K) For privilege periods beginning after December 31, 2017,  
29 the interest deduction limitation in subsection (j) of section 163 of  
30 the Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-  
31 rata basis to interest paid to both related and unrelated parties,  
32 regardless of whether the related parties are subject to the add-back  
33 provision of either subparagraph (I) of paragraph (2) of this  
34 subsection or in section 5 of P.L.2002, c.40 (C.54:10A-4.4).

35 (3) The director may, whenever necessary to properly reflect the  
36 entire net income of any taxpayer, determine the year or period in  
37 which any item of income or deduction shall be included, without  
38 being limited to the method of accounting employed by the  
39 taxpayer.

40 (4) There shall be allowed as a deduction from entire net income  
41 of a banking corporation, to the extent not deductible in  
42 determining federal taxable income, the eligible net income of an  
43 international banking facility determined as follows:

44 (A) The eligible net income of an international banking facility  
45 shall be the amount remaining after subtracting from the eligible  
46 gross income the applicable expenses;

1 (B) Eligible gross income shall be the gross income derived by  
2 an international banking facility, which shall include, but not be  
3 limited to, gross income derived from:

4 (i) Making, arranging for, placing or carrying loans to foreign  
5 persons, provided, however, that in the case of a foreign person  
6 which is an individual, or which is a foreign branch of a domestic  
7 corporation (other than a bank), or which is a foreign corporation or  
8 foreign partnership which is controlled by one or more domestic  
9 corporations (other than banks), domestic partnerships or resident  
10 individuals, all the proceeds of the loan are for use outside of the  
11 United States;

12 (ii) Making or placing deposits with foreign persons which are  
13 banks or foreign branches of banks (including foreign subsidiaries)  
14 or foreign branches of the taxpayers or with other international  
15 banking facilities;

16 (iii) Entering into foreign exchange trading or hedging  
17 transactions related to any of the transactions described in this  
18 paragraph; or

19 (iv) Such other activities as an international banking facility  
20 may, from time to time, be authorized to engage in;

21 (C) Applicable expenses shall be any expense or other  
22 deductions attributable, directly or indirectly, to the eligible gross  
23 income described in subparagraph (B) of this paragraph.

24 (5) (A) (i) Entire net income shall exclude 100% of dividends  
25 which were included in computing such taxable income for federal  
26 income tax purposes, paid to the taxpayer by one or more  
27 subsidiaries owned by the taxpayer to the extent of the 80% or more  
28 ownership of investment described in subsection (d) of this section  
29 for privilege periods beginning on or before December 31, 2016.

30 (ii) For privilege periods beginning after December 31, 2016  
31 and before January 1, 2019, entire net income shall exclude 95% of  
32 dividends which were included in computing such taxable income  
33 for federal income tax purposes, paid or deemed paid, to the  
34 taxpayer by one or more subsidiaries owned by the taxpayer to the  
35 extent of the 80% or more ownership of investment described in  
36 subsection (d) of this section. For the purposes of calculating the  
37 tax liability owed for the paid or deemed paid dividends included in  
38 entire net income by this subparagraph (ii), the taxpayer shall  
39 use either their three-year average allocation factor for the  
40 taxpayer's 2014 through 2016 tax years reported on the taxpayer's  
41 tax returns or 3.5 percent, whichever is lower.

42 (iii) For privilege periods beginning on and after January 1,  
43 2019, entire net income shall exclude 95% of dividends which were  
44 included in computing such taxable income for federal income tax  
45 purposes, paid or deemed paid to the taxpayer by one or more  
46 subsidiaries owned by the taxpayer to the extent of the 80% or more  
47 ownership of investment described in subsection (d) of this section.

1 (B) Entire net income shall exclude 50% of dividends which  
2 were included in computing such taxable income for federal income  
3 tax purposes, paid or deemed paid to the taxpayer by one or more  
4 subsidiaries owned by the taxpayer to the extent of 50% or more  
5 ownership of investment, such ownership of investment calculated  
6 in the same manner as the 80% or more of ownership of investment  
7 is calculated as described in subsection (d) of this section.

8 (C) To the extent a subsidiary received dividends from other  
9 subsidiaries and included those dividends in its entire net income  
10 for the purposes of determining its tax liability pursuant to section 5  
11 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends,  
12 the taxpayer receiving those same dividends from the subsidiary  
13 shall exclude those dividends from its entire net income based on  
14 the subsidiary's allocation factor used by the subsidiary in  
15 determining its tax liability pursuant to section 5 of P.L.1945, c.162  
16 (C.54:10A-5). This subparagraph (C) shall not apply to privilege  
17 periods ending on and after July 31, 2019.

18 (D) For privilege periods ending on and after July 31, 2019 but  
19 before July 31, 2020, to the extent a subsidiary received dividends  
20 from other subsidiaries and included those dividends in its entire net  
21 income for the purposes of determining its tax liability pursuant to  
22 section 5 of P.L.1945, c.162 (C.54:10A-5) and paid tax on those  
23 dividends, the taxpayer receiving those same dividends from the  
24 subsidiary shall exclude those dividends from its entire net income.

25 (E) For privilege periods ending on and after July 31, 2020, for  
26 purposes of this paragraph (5), the members of a combined group  
27 filing a New Jersey combined return shall be treated as one taxpayer  
28 with regard to dividends and deemed dividends that were received  
29 as part of the unitary business of the combined group.

30 (6) (A) Net operating loss deduction. For privilege periods  
31 ending before July 31, 2019, there shall be allowed as a deduction  
32 for the privilege period the net operating loss carryover to that  
33 period.

34 (B) Net operating loss carryover. A net operating loss for any  
35 privilege period ending after June 30, 1984 shall be a net operating  
36 loss carryover to each of the seven privilege periods following the  
37 period of the loss and a net operating loss for any privilege period  
38 ending after June 30, 2009 shall be a net operating loss carryover to  
39 each of the twenty privilege periods following the period of the  
40 loss. The entire amount of the net operating loss for any privilege  
41 period (the "loss period") shall be carried to the earliest of the  
42 privilege periods to which the loss may be carried. The portion of  
43 the loss which shall be carried to each of the other privilege periods  
44 shall be the excess, if any, of the amount of the loss over the sum of  
45 the entire net income, computed without the exclusions permitted in  
46 paragraphs (4) and (5) of this subsection or the net operating loss  
47 deduction provided by subparagraph (A) of this paragraph, for each  
48 of the prior privilege periods to which the loss may be carried.

1 (C) Net operating loss. For purposes of this paragraph the term  
2 "net operating loss" means the excess of the deductions over the  
3 gross income used in computing entire net income without the net  
4 operating loss deduction provided for in subparagraph (A) of this  
5 paragraph and the exclusions in paragraphs (4) and (5) of this  
6 subsection.

7 (D) Change in ownership. Where there is a change in 50% or  
8 more of the ownership of a corporation because of redemption or  
9 sale of stock and the corporation changes the trade or business  
10 giving rise to the loss, no net operating loss sustained before the  
11 changes may be carried over to be deducted from income earned  
12 after such changes. In addition where the facts support the premise  
13 that the corporation was acquired under any circumstances for the  
14 primary purpose of the use of its net operating loss carryover, the  
15 director may disallow the carryover.

16 (E) Notwithstanding the provisions of this paragraph (6) of  
17 subsection (k) of this section to the contrary, for privilege periods  
18 beginning during calendar year 2002 and calendar year 2003, no  
19 deduction for any net operating loss carryover shall be allowed and  
20 for privilege periods beginning during calendar year 2004 and  
21 calendar year 2005, there shall be allowed as a deduction for the  
22 privilege period so much of the net operating loss carryover as  
23 reduces entire net income otherwise calculated by 50%. If and only  
24 to the extent that any net operating loss carryover deduction is  
25 disallowed by reason of this subparagraph (E), the date on which  
26 the amount of the disallowed net operating loss carryover deduction  
27 would otherwise expire shall be extended by a period equal to the  
28 period for which application of the net operating loss was  
29 disallowed by this subparagraph.

30 Provided, that this subparagraph (E) shall not restrict the  
31 surrender or acquisition of corporation business tax benefit  
32 certificates pursuant to section 1 of P.L.1997, c.334 (C.34:1B-  
33 7.42a) and shall not restrict the application of corporation business  
34 tax benefit certificates pursuant to section 2 of P.L.1997, c.334  
35 (C.54:10A-4.2).

36 (F) Reduction for discharge of indebtedness. A net operating  
37 loss for any privilege period ending after June 30, 2014, and any net  
38 operating loss carryover to such privilege period, shall be reduced  
39 by the amount excluded from federal taxable income under  
40 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of  
41 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),  
42 for the privilege period of the discharge of indebtedness.

43 (7) The entire net income of gas, electric and gas and electric  
44 public utilities that were subject to, or would have been subject to  
45 tax if doing business in this State, the provisions of P.L.1940, c.5  
46 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by  
47 substituting the New Jersey depreciation allowance for federal tax  
48 depreciation with respect to assets placed in service prior to

1 January 1, 1998. For gas, electric, and gas and electric public  
2 utilities that were subject to, or would have been subject to tax if  
3 doing business in this State, the provisions of P.L.1940, c.5  
4 (C.54:30A-49 et seq.) prior to 1998, the New Jersey depreciation  
5 allowance shall be computed as follows: All depreciable assets  
6 placed in service prior to January 1, 1998 shall be considered a  
7 single asset account. The New Jersey tax basis of this depreciable  
8 asset account shall be an amount equal to the carryover adjusted  
9 basis for federal income tax purposes on December 31, 1997 of all  
10 depreciable assets in service on December 31, 1997, increased by  
11 the excess, of the "net carrying value," defined to be adjusted book  
12 basis of all assets and liabilities, excluding deferred income taxes,  
13 recorded on the public utility's books of account on December 31,  
14 1997, over the carryover adjusted basis for federal income tax  
15 purposes on December 31, 1997 of all assets and liabilities owned  
16 by the gas, electric, or gas and electric public utility as of December  
17 31, 1997. "Books of account" for gas, gas and electric, and electric  
18 public utilities means the uniform system of accounts as  
19 promulgated by the Federal Energy Regulatory Commission and  
20 adopted by the Board of Public Utilities. The following  
21 adjustments to entire net income shall be made pursuant to this  
22 section:

23 (A) Depreciation for property placed in service prior to January  
24 1, 1998 shall be adjusted as follows:

25 (i) Depreciation for federal income tax purposes shall be  
26 disallowed in full.

27 (ii) A deduction shall be allowed for the New Jersey  
28 depreciation allowance. The New Jersey depreciation allowance  
29 shall be computed for the single asset account described above  
30 based on the New Jersey tax basis as adjusted above as if all assets  
31 in the single asset account were first placed in service on January 1,  
32 1998. Depreciation shall be computed using the straight line method  
33 over a thirty-year life. A full year's depreciation shall be allowed in  
34 the initial tax year. No half-year convention shall apply. The  
35 depreciable basis of the single account shall be reduced by the  
36 adjusted federal tax basis of assets sold, retired, or otherwise  
37 disposed of during any year on which gain or loss is recognized for  
38 federal income tax purposes as described in subparagraph (B) of  
39 this paragraph.

40 (B) Gains and losses on sales, retirements and other dispositions  
41 of assets placed in service prior to January 1, 1998 shall be  
42 recognized and reported on the same basis as for federal income tax  
43 purposes.

44 (C) The Director of the Division of Taxation shall promulgate  
45 regulations describing the methodology for allocating the single  
46 asset account in the event that a portion of the utility's operations  
47 are separated, spun-off, transferred to a separate company or  
48 otherwise desegregated.

1 (8) In the case of taxpayers that are gas, electric, gas and  
2 electric, or telecommunications public utilities as defined pursuant  
3 to subsection (q) of this section, the director shall have authority to  
4 promulgate rules and issue guidance correcting distortions and  
5 adjusting timing differences resulting from the adoption of  
6 P.L.1997, c.162 (C.54:10A-5.25 et al.).

7 (9) Notwithstanding paragraph (1) of this subsection, entire net  
8 income shall not include the income derived by a corporation  
9 organized in a foreign country from the international operation of a  
10 ship or ships, or from the international operation of aircraft, if such  
11 income is exempt from federal taxation pursuant to section 883 of  
12 the federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

13 (10) Entire net income shall exclude all income of an alien  
14 corporation the activities of which are limited in this State to  
15 investing or trading in stocks and securities for its own account,  
16 investing or trading in commodities for its own account, or any  
17 combination of those activities, within the meaning of section 864  
18 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in  
19 effect on December 31, 1998. Notwithstanding the previous  
20 sentence, if an alien corporation undertakes one or more infrequent,  
21 extraordinary or non-recurring activities, including but not limited  
22 to the sale of tangible property, only the income from such  
23 infrequent, extraordinary or non-recurring activity shall be subject  
24 to the tax imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et  
25 seq.), and that amount of income subject to tax shall be determined  
26 without regard to the allocation to that specific transaction of any  
27 general business expense of the taxpayer and shall be specifically  
28 assigned to this State for taxation by this State without regard to  
29 section 6 of P.L.1945, c.162 (C.54:10A-6). For the purposes of this  
30 paragraph, "alien corporation" means a corporation organized under  
31 the laws of a jurisdiction other than the United States or its political  
32 subdivisions.

33 (11) No deduction shall be allowed for research and  
34 experimental expenditures, to the extent that those research and  
35 experimental expenditures are qualified research expenses or basic  
36 research payments for which an amount of credit is claimed  
37 pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless  
38 those research and experimental expenditures are also used to  
39 compute a federal credit claimed pursuant to section 41 of the  
40 federal Internal Revenue Code of 1986, 26 U.S.C. s.41.

41 (12) (A) Notwithstanding the provisions of subsection (k) of  
42 section 168 of the federal Internal Revenue Code of 1986, 26  
43 U.S.C. s.168, subsection (b) of section 1400L of the federal Internal  
44 Revenue Code of 1986, 26 U.S.C. s.1400L, or any other federal  
45 law, for property acquired after September 10, 2001, the  
46 depreciation deduction otherwise allowed pursuant to section 167 of  
47 the federal Internal Revenue Code of 1986, 26 U.S.C. s.167, shall  
48 be determined pursuant to the provisions of the federal Internal

1 Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in effect on  
2 December 31, 2001.

3 (B) The director shall prescribe the rules and regulations  
4 necessary to carry out the provisions of this paragraph, including,  
5 among others, those for determining the adjusted basis of the  
6 acquired property for the purposes of the Corporation Business Tax  
7 Act (1945), P.L.1945, c.162.

8 (13) (A) Notwithstanding the provisions of section 179 of the  
9 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for  
10 property placed in service on or after January 1, 2004, the costs that  
11 a taxpayer may otherwise elect to treat as an expense which is not  
12 chargeable to a capital account shall be determined pursuant to the  
13 provisions of the federal Internal Revenue Code of 1986 (26 U.S.C.  
14 s.1 et seq.) in effect on December 31, 2002.

15 (B) The director shall prescribe the rules and regulations  
16 necessary to carry out the provisions of this paragraph, including,  
17 among others, those for determining the adjusted basis of the  
18 acquired property for the purposes of the Corporation Business Tax  
19 Act (1945), P.L.1945, c.162.

20 (14) Notwithstanding the provisions of subsection (i) of section  
21 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),  
22 for privilege periods beginning after December 31, 2008 and before  
23 January 1, 2011, entire net income shall include the amount of  
24 discharge of indebtedness income excluded for federal income tax  
25 purposes pursuant to subsection (i) of section 108 of the federal  
26 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege  
27 periods beginning on or after January 1, 2014 and before January 1,  
28 2019, entire net income shall exclude the amount of discharge of  
29 indebtedness income included for federal income tax purposes,  
30 pursuant to subsection (i) of section 108 of the federal Internal  
31 Revenue Code of 1986 (26 U.S.C. s.108).

32 (15) Entire net income shall exclude the gain or income derived  
33 from the sale or assignment of a tax credit transfer certificate  
34 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section  
35 10 of P.L.2014, c.63 (C.34:1B-251).

36 (16) (A) There shall be allowed as a deduction an amount  
37 computed in accordance with this paragraph.

38 (B) For purposes of this paragraph, "net deferred tax liability"  
39 means deferred tax liabilities that exceed the deferred tax assets of  
40 the combined group, as computed in accordance with generally  
41 accepted accounting principles, and "net deferred tax asset" means  
42 that deferred tax assets exceed the deferred tax liabilities of the  
43 combined group, as computed in accordance with generally  
44 accepted accounting principles.

45 (C) Only publicly traded companies, including affiliated  
46 corporations participating in the filing of a publicly traded  
47 company's financial statements prepared in accordance with

1 generally accepted accounting principles, as of the effective date of  
2 this paragraph, shall be eligible for this deduction.

3 (D) If the provisions of sections 18 through 23 of P.L.2018, c.48  
4 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to  
5 the members' net deferred tax liability or an aggregate decrease to  
6 the members' net deferred tax asset, or an aggregate change from a  
7 net deferred tax asset to a net deferred tax liability, the combined  
8 group shall be entitled to a deduction, as determined in this  
9 paragraph.

10 (E) For 10 years beginning with the combined group's first  
11 privilege period beginning on or after January 1 of the fifth year  
12 after the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a  
13 combined group shall be entitled to a deduction from combined  
14 group entire net income equal to one-tenth of the amount necessary  
15 to offset the increase in the net deferred tax liability or decrease in  
16 the net deferred tax asset, or aggregate change from a net deferred  
17 tax asset to a net deferred tax liability. Such increase in the net  
18 deferred tax liability or decrease in the net deferred tax asset or the  
19 aggregate change from a net deferred tax asset to a net deferred tax  
20 liability shall be computed based on the change that would result  
21 from the imposition of the unitary reporting requirements under  
22 sections 1 and 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and  
23 C.54:10A-4.6 to C.54:10A-4.11) but for the deduction provided  
24 under this paragraph as of the effective date of this paragraph.

25 (F) The deferred tax impact determined in subparagraph (E) of  
26 this paragraph must be converted to the annual Deferred Tax  
27 Deduction amount, as follows:

28 (i) the deferred tax impact determined in subparagraph (E) of  
29 this paragraph shall be divided by the rate determined under section  
30 5 of P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018,  
31 c.48 (C.54:10A-5.41 et al.);

32 (ii) the resulting amount shall be further divided by the New  
33 Jersey unitary business allocation factor that was used by the  
34 combined group in the calculation of the deferred tax assets and  
35 deferred tax liabilities as described in subparagraph (E) of this  
36 paragraph;

37 (iii) the resulting amount represents the total net Deferred Tax  
38 Deduction available over the ten-year period as described in  
39 subparagraph (E) of this paragraph.

40 (G) The deduction calculated under this paragraph shall not be  
41 adjusted as a result of any events happening subsequent to such  
42 calculation, including, but not limited to, any disposition or  
43 abandonment of assets. Such deduction shall be calculated without  
44 regard to the federal tax effect and shall not alter the tax basis of  
45 any asset. If the deduction under this section is greater than  
46 combined group entire net income, any excess deduction shall be  
47 carried forward and applied as a deduction to combined group entire  
48 net income in future privilege periods until fully utilized.

1 (H) Any combined group intending to claim a deduction under  
2 this paragraph shall file a statement with the director on or before  
3 July 1 of the year subsequent to the first privilege period for which  
4 a combined return is required. Such statement shall specify the  
5 total amount of the deduction which the combined group claims on  
6 such form and in such manner as prescribed by the director. No  
7 deduction shall be allowed under this paragraph for any privilege  
8 period except to the extent claimed on such timely filed statement  
9 in accordance with this paragraph.

10 (17) (A) In the case of a taxpayer that is a cannabis licensee,  
11 there shall be allowed as a deduction an amount equal to any  
12 expenditure that is eligible to be claimed as a federal income tax  
13 deduction but is disallowed because cannabis is a controlled  
14 substance under federal law.

15 (B) Subparagraph (A) of this paragraph shall only apply to a  
16 taxpayer with less than \$15,000,000 of gross receipts, as gross  
17 receipts are calculated in accordance with the gross receipts test of  
18 subsection (c) of section 448 of the Internal Revenue Code (26  
19 U.S.C. s.448), but without regard to the \$25,000,000 maximum or  
20 the adjustment for inflation of that subsection.

21 (C) For purposes of this paragraph, "licensee" means the same as  
22 defined in section 3 of P.L. c. (C. ) (pending before the  
23 Legislature as Assembly Bill No. 21 and Senate Bill No. 21 of  
24 2020).

25 (l) "Real estate investment trust" shall mean any corporation,  
26 trust or association qualifying and electing to be taxed as a real  
27 estate investment trust under federal law.

28 (m) "Financial business corporation" shall mean any corporate  
29 enterprise which is (1) in substantial competition with the business  
30 of national banks and which (2) employs moneyed capital with the  
31 object of making profit by its use as money, through discounting  
32 and negotiating promissory notes, drafts, bills of exchange and  
33 other evidences of debt; buying and selling exchange; making of or  
34 dealing in secured or unsecured loans and discounts; dealing in  
35 securities and shares of corporate stock by purchasing and selling  
36 such securities and stock without recourse, solely upon the order  
37 and for the account of customers; or investing and reinvesting in  
38 marketable obligations evidencing indebtedness of any person,  
39 copartnership, association or corporation in the form of bonds,  
40 notes or debentures commonly known as investment securities; or  
41 dealing in or underwriting obligations of the United States, any  
42 state or any political subdivision thereof, or of a corporate  
43 instrumentality of any of them. This shall include, without  
44 limitation of the foregoing, business commonly known as industrial  
45 banks, dealers in commercial paper and acceptances, sales finance,  
46 personal finance, small loan and mortgage financing businesses, as  
47 well as any other enterprise employing moneyed capital coming  
48 into competition with the business of national banks; provided that

1 the holding of bonds, notes, or other evidences of indebtedness by  
2 individual persons not employed or engaged in the banking or  
3 investment business and representing merely personal investments  
4 not made in competition with the business of national banks, shall  
5 not be deemed financial business. Nor shall "financial business"  
6 include national banks, production credit associations organized  
7 under the Farm Credit Act of 1933 or the Farm Credit Act of 1971,  
8 Pub.L.92-181 (12 U.S.C. s.2091 et seq.), stock and mutual  
9 insurance companies duly authorized to transact business in this  
10 State, security brokers or dealers or investment companies or  
11 bankers not employing moneyed capital coming into competition  
12 with the business of national banks, real estate investment trusts, or  
13 any of the following entities organized under the laws of this State:  
14 credit unions, savings banks, savings and loan and building and  
15 loan associations, pawnbrokers, and State banks and trust  
16 companies.

17 (n) "International banking facility" shall mean a set of asset and  
18 liability accounts segregated on the books and records of a  
19 depository institution, United States branch or agency of a foreign  
20 bank, or an Edge or Agreement Corporation that includes only  
21 international banking facility time deposits and international  
22 banking facility extensions of credit as such terms are defined in  
23 section 204.8(a)(2) and section 204.8(a)(3) of Regulation D of the  
24 board of governors of the Federal Reserve System, 12 CFR Part  
25 204, effective December 3, 1981. In the event that the United  
26 States enacts a law, or the board of governors of the Federal  
27 Reserve System adopts a regulation which amends the present  
28 definition of international banking facility or of such facilities' time  
29 deposits or extensions of credit, the Commissioner of Banking and  
30 Insurance shall forthwith adopt regulations defining such terms in  
31 the same manner as such terms are set forth in the laws of the  
32 United States or the regulations of the board of governors of the  
33 Federal Reserve System. The regulations of the Commissioner of  
34 Banking and Insurance shall thereafter provide the applicable  
35 definitions.

36 (o) "S corporation" means a corporation included in the  
37 definition of an "S corporation" pursuant to section 1361 of the  
38 federal Internal Revenue Code of 1986, 26 U.S.C. s.1361.

39 (p) "New Jersey S corporation" means a corporation that is an S  
40 corporation; which has made a valid election pursuant to section 3  
41 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
42 corporation continuously since the effective date of the valid  
43 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-  
44 5.22).

45 (q) "Public Utility" means "public utility" as defined in  
46 R.S.48:2-13.

47 (r) "Qualified investment partnership" means a partnership  
48 under this act that has more than 10 members or partners with no

1 member or partner owning more than a 50% interest in the entity  
2 and that derives at least 90% of its gross income from dividends,  
3 interest, payments with respect to securities loans, and gains from  
4 the sale or other disposition of stocks or securities or foreign  
5 currencies or commodities or other similar income (including but  
6 not limited to gains from swaps, options, futures or forward  
7 contracts) derived with respect to its business of investing or  
8 trading in those stocks, securities, currencies or commodities, but  
9 "investment partnership" shall not include a "dealer in securities"  
10 within the meaning of section 1236 of the federal Internal Revenue  
11 Code of 1986, 26 U.S.C. s.1236.

12 (s) "Savings institution" means a state or federally chartered  
13 building and loan association, savings and loan association, or  
14 savings bank.

15 (t) "Partnership" means an entity classified as a partnership for  
16 federal income tax purposes.

17 (u) "Prior net operating loss conversion carryover" means a net  
18 operating loss incurred in a privilege period ending prior to July 31,  
19 2019 and converted from a pre-allocation net operating loss to a  
20 post-allocation net operating loss as follows:

21 (1) As used in this subsection:

22 "Base year" means the last privilege period ending prior to July  
23 31, 2019.

24 "Base year BAF" means the taxpayer's business allocation factor  
25 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-  
26 6 through C.54:10A-10) for purposes of calculating entire net  
27 income for the base year, as such section was in effect for the last  
28 privilege period ending prior to July 31, 2019.

29 "UNOL" means the unabsorbed portion of net operating loss as  
30 calculated under paragraph (6) of subsection (k) of this section as  
31 such paragraph was in effect for the last privilege period ending  
32 prior to July 31, 2019, that was not deductible in previous privilege  
33 periods and was eligible for carryover on the last day of the base  
34 year subject to the limitations for deduction under such subsection,  
35 including any net operating loss sustained by the taxpayer during  
36 the base year.

37 (2) The prior net operating loss conversion carryover shall be  
38 calculated as follows:

39 (A) The taxpayer shall first calculate the tax value of its UNOL  
40 for the base year and for each preceding privilege period for which  
41 there is a UNOL. The value of the UNOL for each privilege period  
42 is equal to the product of (I) the amount of the taxpayer's UNOL for  
43 a privilege period, and (II) the taxpayer's base year BAF. This result  
44 shall equal the taxpayer's prior net operating loss conversion  
45 carryover.

46 (B) The taxpayer shall continue to carry over its prior net  
47 operating loss conversion carryover to offset its allocated entire net  
48 income as provided in sections 6 through 10 of P.L.1945, c.162

1 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on  
2 and after July 31, 2019. Such carryover periods shall not exceed  
3 the twenty privilege periods following the privilege period of the  
4 initial loss. The entire amount of the prior net operating loss  
5 conversion carryover for any privilege period shall be carried to the  
6 earliest of the privilege periods to which the loss may be carried.  
7 The portion of the prior net operating loss conversion carryover  
8 which shall be carried to each of the other privilege periods shall be  
9 the excess, if any, of the amount of the prior net operating loss  
10 conversion carryover over the sum of the entire net income,  
11 computed without the exclusions permitted in paragraphs (4) and  
12 (5) of subsection (k) of this section allocated to this State.

13 (C) The prior net operating loss conversion carryover computed  
14 under this subsection shall be applied against the entire net income  
15 allocated to this State before the net operating loss carryover  
16 computed under subsection (v) of this section.

17 (v) "Net operating loss deduction" means the amount allowed as  
18 a deduction for the net operating loss carryover to the privilege  
19 period, calculated as follows:

20 (1) Net operating loss carryover. A net operating loss for any  
21 privilege period ending on or after July 31, 2019, shall be a net  
22 operating loss carryover to each of the twenty privilege periods  
23 following the period of the loss. The entire amount of the net  
24 operating loss for any privilege period shall be carried to the earliest  
25 of the privilege periods to which the loss may be carried. The  
26 portion of the loss which shall be carried to each of the other  
27 privilege periods shall be the excess, if any, of the amount of the  
28 loss over the sum of the entire net income, computed without the  
29 exclusions permitted in paragraphs (4) and (5) of subsection (k) of  
30 this section allocated to this State.

31 (2) Net operating loss. For purposes of this paragraph the term  
32 "net operating loss" means the excess of the deductions over the  
33 gross income used in computing entire net income, without regard  
34 to any net operating loss carryover, and computed without the  
35 exclusions in paragraphs (4) and (5) of subsection (k) of this  
36 section, allocated to this State pursuant to sections 6 through 10 of  
37 P.L.1945, c.162 (C.54:10A-6 through C.54:10A-10).

38 (3) Reduction for discharge of indebtedness. A net operating  
39 loss for any privilege period ending on or after July 31, 2019, and  
40 any net operating loss carryover to such privilege period, shall be  
41 reduced by the amount excluded from federal taxable income under  
42 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of  
43 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108,  
44 for the privilege period of the discharge of indebtedness.

45 (4) A net operating loss carryover shall not include any net  
46 operating loss incurred during any privilege period ending prior to  
47 July 31, 2019.

1 (5) Change in ownership. Where there is a change in 50% or  
2 more of the ownership of a corporation because of redemption or  
3 sale of stock and the corporation changes the trade or business  
4 giving rise to the loss, no net operating loss sustained before the  
5 changes may be carried over to be deducted from income earned  
6 after such changes. In addition, where the facts support the premise  
7 that the corporation was acquired under any circumstances for the  
8 primary purpose of the use of its net operating loss carryover, the  
9 director may disallow the carryover; provided, however, this  
10 paragraph shall not apply between members of a combined group  
11 reported on a New Jersey combined return.

12 (w) "Taxable net income" means entire net income allocated to  
13 this State as calculated pursuant to sections 6 through 8 of  
14 P.L.1945, c.162 (C.54:10A-6 through 54:10A-8) as modified by  
15 subtracting any prior net operating loss conversion carryforward  
16 calculated pursuant to subsection (u) of this section, and any net  
17 operating loss calculated pursuant to subsection (v) of this section.

18 (x) "Affiliated group" means, for purposes of section 23 of  
19 P.L.2018, c.48 (C.54:10A-4.11), an affiliated group as defined in  
20 section 1504 of the federal Internal Revenue Code, 26 U.S.C.  
21 s.1504, except such affiliated group shall include all U.S. domestic  
22 corporations that are commonly owned, directly or indirectly, by  
23 any member of such affiliated group, without regard to whether the  
24 affiliated group includes (1) corporations included in more than one  
25 federal consolidated return, (2) corporations engaged in one or more  
26 unitary businesses, or (3) corporations that are not engaged in a  
27 unitary business with any other member of the affiliated group.

28 For purposes of this subsection:

29 "U.S. domestic corporations" means: (1) business entities  
30 wherever incorporated or formed that are U.S. domestic  
31 corporations, are deemed to be, or are treated as U.S. domestic  
32 corporations under the provisions of the federal Internal Revenue  
33 Code; or (2) any entities incorporated or formed under the laws of a  
34 foreign nation that are required to file federal tax returns if such  
35 entities have effectively connected income within the meaning of  
36 the federal Internal Revenue Code; and

37 "Commonly owned" means that more than 50 percent of the  
38 voting control of each member of an affiliated group is directly or  
39 indirectly owned by a common owner or owners, either corporate or  
40 non-corporate, whether or not the owner or owners are members of  
41 the affiliated group. Whether voting control is indirectly owned  
42 shall be determined in accordance with section 318 of the federal  
43 Internal Revenue Code (26 U.S.C. s.318).

44 (y) "Combinable captive insurance company" means an entity  
45 that is treated as an association taxable as a corporation under the  
46 federal Internal Revenue Code:

47 (1) more than 50% of the voting stock of which is owned or  
48 controlled, directly or indirectly, by a single entity that is treated as

1 an association taxable as a corporation under the federal Internal  
2 Revenue Code, and not exempt from federal income tax;

3 (2) that is licensed as a captive insurance company under the  
4 laws of this State or another jurisdiction;

5 (3) whose business includes providing, directly and indirectly,  
6 insurance or reinsurance covering the risks of its parent, members  
7 of its affiliated group, or both; and

8 (4) 50% or less of whose gross receipts for the privilege period  
9 consist of premiums from arrangements that constitute insurance for  
10 federal income tax purposes.

11 A combinable captive insurance company shall not be exempt  
12 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive  
13 insurance company that does not meet the definition of combinable  
14 captive insurance company shall be excluded as provided in  
15 subsection k. of section 18 of P.L.2018, c.48 (C.54:10A-4.6) and  
16 shall be exempt under section 3 of P.L.1945, c.162 (C.54:10A-3).

17 For purposes of this definition:

18 "Affiliated group" shall have the same meaning as that term is  
19 given by section 1504 of the federal Internal Revenue Code, 26  
20 U.S.C. s.1504, except that the term "common parent corporation" as  
21 used in section 1504 of the federal Internal Revenue Code, 26  
22 U.S.C. s.1504, shall mean any person, as defined in section 7701 of  
23 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references  
24 to "at least 80%" in section 1504 of the federal Internal Revenue  
25 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section  
26 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall  
27 be read without regard to the exclusions provided for in subsection  
28 (b) of that section.

29 "Gross receipts" includes the amounts included in gross receipts  
30 for purposes of paragraph (15) of subsection (c) of section 501 of  
31 the federal Internal Revenue Code, 26 U.S.C. s.501, except that  
32 those amounts also include all premiums.

33 "Premiums" includes consideration for annuity contracts and  
34 excludes any part of the consideration for insurance, reinsurance, or  
35 annuity contracts that do not provide bona fide insurance,  
36 reinsurance, or annuity benefits.

37 (z) "Combined group" means the group of all companies that  
38 have common ownership and are engaged in a unitary business,  
39 where at least one company is subject to tax under this chapter, and  
40 shall include all business entities, except as provided for under any  
41 section of the Corporation Business Tax Act (1945), P.L.1945,  
42 c.162 (C.54:10A-1 et seq.).

43 A combined group shall be treated, for privilege periods ending  
44 on and after July 31, 2020, as one taxpayer for purposes of  
45 paragraph (1) of subsection (c) of section 5 of P.L.1945, c.162  
46 (C.54:10A-5) and section 1 of P.L.2018, c.48 (C.54:10A-5.41) for  
47 the income derived from the unitary business; provided however,  
48 with regard to the surtax imposed pursuant to section 1 of P.L.2018,

1 c.48 (C.54:10A-5.41) and for that purpose only, the portion of  
2 income that is attributable to a member which is a public utility  
3 exempt from the surtax shall not be included when computing the  
4 surtax due.

5 (aa) "Common ownership" means that more than 50% of the  
6 voting control of each member of a combined group is directly or  
7 indirectly owned by a common owner or owners, either corporate or  
8 non-corporate, whether or not the owner or owners are members of  
9 the combined group. Whether voting control is indirectly owned  
10 shall be determined in accordance with section 318 of the federal  
11 Internal Revenue Code, 26 U.S.C. s.318.

12 (bb) "Group privilege period" means, if two or more members in  
13 the combined group file in the same federal consolidated tax return,  
14 the same income year as that used on the federal consolidated tax  
15 return and, in all other cases, the privilege period of the managerial  
16 member.

17 (cc) "Managerial member" means if the combined group has a  
18 common parent corporation and that common parent corporation is  
19 a taxable member, the managerial member shall be the common  
20 parent corporation. In other cases, the combined group shall select  
21 a taxable member as its managerial member or, in the discretion of  
22 the director or upon failure of the combined group to select its  
23 managerial member, the director shall designate a taxable member  
24 of the combined group as managerial member.

25 (dd) "Member" means a business entity that is a part of a  
26 combined group.

27 A corporation exempt pursuant to section 3 of P.L.1945, c.162  
28 (C.54:10A-3) from the tax imposed by P.L.1945, c.162 (C.54:10A-1  
29 et seq.) shall not be a member of a combined group.

30 (ee) "Nontaxable member" means a member that is: (i) not  
31 subject to tax pursuant to the Corporation Business Tax Act (1945),  
32 P.L.1945, c.162 (C.54:10A-1 et seq.); or (ii) (deleted by  
33 amendment, P.L.2020, c.118 (C.54:10A-5.46 et al.).

34 (ff) "Taxable member" means a member that is subject to tax  
35 pursuant to the Corporation Business Tax Act (1945), P.L.1945,  
36 c.162 (C.54:10A-1 et seq.).

37 A New Jersey S corporation shall only be included as a taxable  
38 member of a combined group filing a New Jersey combined return  
39 if the New Jersey S Corporation elects to be included as a member  
40 and taxed at the same rate as the other members of the combined  
41 group. A New Jersey S corporation that does not elect to be  
42 included shall be excluded as a member of the combined return and  
43 shall file a separate return.

44 (gg) "Unitary business" means a single economic enterprise that  
45 is made up either of separate parts of a single business entity or of a  
46 group of business entities under common ownership that are  
47 sufficiently interdependent, integrated, and interrelated through  
48 their activities so as to provide a synergy and mutual benefit that

1 produces a sharing or exchange of value among them and a  
2 significant flow of value among the separate parts. "Unitary  
3 business" shall be construed to the broadest extent permitted under  
4 the Constitution of the United States. A business conducted by a  
5 partnership which is in a unitary business with the combined group  
6 shall be treated as the business of the partners that are members of  
7 the combined group, whether the partnership interest is held directly  
8 or indirectly through a series of partnerships, to the extent of a  
9 partner's distributive share of partnership income. The amount of  
10 partnership income to be included in the partner's entire net income  
11 shall be determined in accordance with subsection a. of section 3 of  
12 P.L.2001, c.136 (C.54:10A-15.6) or subsection a. of section 4 of  
13 P.L.2001, c.136 (C.54:10A-15.7), as applicable. A business  
14 conducted directly or indirectly by one corporation is unitary with  
15 that portion of a business conducted by another corporation through  
16 its direct or indirect interest in a partnership.

17 (cf: P.L.2020, c.118, s.3)

18

19 2. Section 12 of P.L.1993, c.173 (C.54A:5-10) is amended to  
20 read as follows:

21 12. For the purposes of the "New Jersey Gross Income Tax Act,"  
22 N.J.S.54A:1-1 et seq.:

23 "New Jersey S corporation" means a corporation that is an S  
24 corporation; which has made a valid election pursuant to section 3  
25 of P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
26 corporation continuously since the effective date of the valid  
27 election made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-  
28 5.22).

29 "Pro rata share" means the portion of any items attributable to an  
30 S corporation shareholder for a taxable year determined in the  
31 manner provided in, and subject to any election made under  
32 subsection (a) of section 1377 or subsection (e) of section 1362 of  
33 the federal Internal Revenue Code of 1986, 26 U.S.C. s.1377 and  
34 s.1362.

35 "Pro rata share of S corporation income" means the sum of the  
36 shareholder's proportionate share of:

37 For a New Jersey S corporation, the S corporation income  
38 allocated to this State of all New Jersey S corporations; and the S  
39 corporation income not allocated to this State.

40 "S corporation" means a corporation included in the definition of  
41 an "S corporation" pursuant to section 1361 of the federal Internal  
42 Revenue Code of 1986, 26 U.S.C. s.1361.

43 "S corporation income" means the net of an S corporation's items  
44 of income, loss or deduction taken into account by the shareholder  
45 in the manner provided in section 1366 of the federal Internal  
46 Revenue Code of 1986, 26 U.S.C. s.1366; provided however that:

47 a. S corporation income shall be determined without the  
48 exclusion, deduction or credit of:

- 1 (1) any dividend exclusion or deduction otherwise allowed  
2 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,  
3 c.162 (C.54:10A-4);
- 4 (2) taxes paid or accrued to the United States, a possession or  
5 territory of the United States, a state including this State, a political  
6 subdivision thereof, or the District of Columbia on or measured by  
7 profits or income, or business presence or business activity, of the  
8 corporation;
- 9 (3) any income taxes paid or accrued to the United States, a  
10 possession or territory of the United States, a state including this  
11 State, a political subdivision thereof, or the District of Columbia  
12 paid or accrued by the S corporation on behalf of, or in satisfaction  
13 of the liabilities of, shareholders of the corporation;
- 14 (4) interest income on obligations of any state other than this  
15 State, or of a political subdivision thereof, or of the federal  
16 government, except as deducted pursuant to subsection b. of this  
17 section; or
- 18 (5) interest on indebtedness incurred or continued, expenses  
19 paid and incurred to purchase, carry, manage or conserve, and  
20 expenses of collection of the income or gain from obligations the  
21 income or gain from which is deductible pursuant to subsection b.  
22 of this definition; and
- 23 b. S corporation income shall be determined after deduction of:
- 24 (1) any gains or income derived from obligations which are  
25 referred to in N.J.S.54A:6-14 or from securities which evidence  
26 ownership in a qualified investment fund as defined in section 2 of  
27 P.L.1987, c.310 (C.54A:6-14.1), and any interest excluded from  
28 gross income pursuant to N.J.S.54A:6-14, or distributions excluded  
29 from income pursuant to section 2 of P.L.1987, c.310 (C.54A:6-  
30 14.1); and
- 31 (2) (a) in the case of a taxpayer that is a cannabis licensee, an  
32 amount equal to any expenditure that is eligible to be claimed as a  
33 federal income tax deduction but is disallowed because cannabis is  
34 a controlled substance under federal law;
- 35 (b) subparagraph (a) of this paragraph shall only apply to a  
36 taxpayer with less than \$15,000,000 of gross receipts, as gross  
37 receipts are calculated in accordance with the gross receipts test of  
38 subsection (c) of section 448 of the Internal Revenue Code (26  
39 U.S.C. s.448), but without regard to the \$25,000,000 maximum or  
40 the adjustment for inflation of that subsection;
- 41 (c) for purposes of this paragraph, "licensee" means the same as  
42 defined in section 3 of P.L. c. (C. ) (pending before the  
43 Legislature as Assembly Bill No. 21 and Senate Bill No. 21 of  
44 2020); and
- 45 c. The character of any S corporation item taken into account  
46 by a shareholder of an S corporation shall be determined as if such  
47 items were received or incurred by the S corporation and not its  
48 shareholder.

1 "S corporation income allocated to this State" means that portion  
2 of the S corporation income that is allocated to this State by the  
3 allocation factor of the corporation for the fiscal or calendar  
4 accounting period pursuant to sections 6 through 10 of P.L.1945,  
5 c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax  
6 imposed pursuant to paragraph (3) of subsection (c) of section 5 of  
7 P.L.1945, c.162 (C. 54:10A-5).

8 "S corporation income not allocated to this State" means S  
9 corporation income less S corporation income allocated to this  
10 State.

11 (cf: P.L.1993, c.173, s.12)

12  
13 3. (New section) New Jersey gross income under subsections b.  
14 and k. of N.J.S.54A:5-1 shall be determined without regard to  
15 section 280E of the Internal Revenue Code (26 U.S.C. 280E).

16  
17 4. (New section) Notwithstanding the provisions of the  
18 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
19 1 et seq.), to the contrary, the director may adopt, immediately,  
20 upon filing with the Office of Administrative Law, regulations that  
21 the director deems necessary to implement the provisions of P.L. ,  
22 c. (C. ) (pending before the Legislature as this bill), which  
23 regulations shall be effective for a period not to exceed 360 days  
24 from the date of the filing. The director may thereafter amend,  
25 adopt, or readopt the regulations in accordance with the  
26 requirements of P.L.1968, c.410 (C.52:14B-1 et seq.).

27  
28 5. This act shall take effect immediately or upon the enactment  
29 into law of P.L. , c. (C. ) (pending before the Legislature as  
30 Assembly Bill No. 21 and Senate Bill No. 21 of 2020), whichever  
31 occurs later.

#### 32 33 34 STATEMENT

35  
36 This bill decouples the corporation business tax from the federal  
37 income tax provision that prohibits deductions and credits for  
38 cannabis businesses. The bill also decouples S corporation income  
39 under the gross income tax from the federal provision. In both  
40 instances, the bill only decouples from the federal provision for  
41 taxpayers with less than \$15 million of gross receipts.

42 Under the State's corporation business tax, and for S corporation  
43 income under the gross income tax, the starting point for calculating  
44 income that is taxable is that which is taxable under the federal  
45 income tax. Federal law (26 U.S.C. s.280E) prohibits deductions  
46 and credits for businesses trafficking in federally defined schedule I  
47 and II controlled substances, which includes cannabis. Deductions  
48 for business expenses are therefore not available to cannabis

1 businesses, which results in a higher federal income tax liability  
2 than other businesses with similar amounts of income. Because the  
3 corporation business tax is currently linked by State law to federal  
4 law in this respect, cannabis businesses subject to the corporation  
5 business tax would also have a higher tax liability than other  
6 businesses with similar amounts of income. The same is true for S  
7 corporation income under the gross income tax. In contrast, other  
8 forms of business income under the gross income tax are not linked  
9 to the federal provision by State law, but this bill nevertheless  
10 includes a provision to state explicitly that the federal provision  
11 does not apply.

12 As a result of enactment of this bill, a business with less than \$15  
13 million of gross receipts and subject to the corporation business tax  
14 will be allowed to deduct from income all ordinary and necessary  
15 business expenses incurred in carrying on a licensed cannabis  
16 business. The deduction will also be allowed when calculating S  
17 corporation income from S corporations with less than \$15 million  
18 of gross receipts, and will continue to be allowed for other forms of  
19 business income under the gross income tax regardless of total  
20 gross receipts.

ASSEMBLY OVERSIGHT, REFORM AND FEDERAL  
RELATIONS COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 3946**

with committee amendments

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 29, 2022

The Assembly Oversight, Reform and Federal Relations Committee reports favorably Assembly Bill No. 3946 with committee amendments.

As amended, this bill decouples the corporation business tax from the federal income tax provision that prohibits deductions and credits for cannabis businesses. The bill also decouples S corporation income under the gross income tax from the federal provision.

Under the State's corporation business tax, and for S corporation income under the gross income tax, the starting point for calculating income that is taxable is that which is taxable under the federal income tax. Federal law (26 U.S.C. s.280E) prohibits deductions and credits for businesses trafficking in federally defined schedule I and II controlled substances, which includes cannabis. Deductions for business expenses are therefore not available to cannabis businesses, which results in a higher federal income tax liability than other businesses with similar amounts of income. Because the corporation business tax is currently linked by State law to federal law in this respect, cannabis businesses subject to the corporation business tax would also have a higher tax liability than other businesses with similar amounts of income. The same is true for S corporation income under the gross income tax. In contrast, other forms of business income under the gross income tax are not linked to the federal provision by State law, but this bill nevertheless includes a provision to state explicitly that the federal provision does not apply.

As a result of enactment of this bill, a business subject to the corporation business tax will be allowed to deduct from income all ordinary and necessary business expenses incurred in carrying on a licensed cannabis business. The deduction will also be allowed when calculating S corporation income from S corporations, and will continue to be allowed for other forms of business income under the gross income tax regardless of total gross receipts.

COMMITTEE AMENDMENTS

The committee amended the bill to remove the \$15 million cap, allowing taxpayers that have total gross receipts of greater than \$15 million access to deductions and credits for ordinary and necessary business expenses incurred in carrying on a licenses cannabis business.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 3946

with committee amendments

# STATE OF NEW JERSEY

DATED: JANUARY 19, 2023

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 3946 (1R) with committee amendments.

This bill decouples the corporation business tax from the federal income tax provision that prohibits deductions and credits for cannabis businesses. The bill also decouples S corporation income under the gross income tax from the federal provision.

Under the State's corporation business tax, and for S corporation income under the gross income tax, the starting point for calculating income that is taxable is that which is taxable under the federal income tax. Federal law (26 U.S.C. s.280E) prohibits deductions and credits for businesses trafficking in federally defined schedule I and II controlled substances, which includes cannabis. Deductions for business expenses are therefore not available to cannabis businesses, which results in a higher federal income tax liability than other businesses with similar amounts of income. Because the corporation business tax is currently linked by State law to federal law in this respect, cannabis businesses subject to the corporation business tax would also have a higher tax liability than other businesses with similar amounts of income. The same is true for S corporation income under the gross income tax. In contrast, other forms of business income under the gross income tax are not linked to the federal provision by State law, but this bill nevertheless includes a provision to state explicitly that the federal provision does not apply.

As a result of enactment of this bill, a business subject to the corporation business tax will be allowed to deduct from income all ordinary and necessary business expenses incurred in carrying on a licensed cannabis business. The deduction will also be allowed when calculating S corporation income from S corporations, and will continue to be allowed for other forms of business income under the gross income tax regardless of total gross receipts.

As amended, the bill allows, in the case of a taxpayer that is a cannabis licensee, a deduction in an amount equal to any expenditure that would qualify as a specified research or experimental expenditure pursuant to section 174 of the Internal Revenue Code but is disallowed

as a deduction for federal tax purposes because cannabis is a controlled substance under federal law. The bill, as amended, allows any expenditure that is claimed as such a deduction to also be claimed as a qualified research expense for purposes of the credit allowed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24).

As amended and reported by the committee, Assembly Bill No. 3946 (2R) is identical to Senate Bill No. 340 (1R), as also amended and reported by the committee on this date.

#### COMMITTEE AMENDMENTS:

The committee amendments provide that, for purposes of determining a cannabis licensee's income under the Corporation Business Tax Act, income is to be determined without regard to section 280E of the Internal Revenue Code (26 U.S.C. s.280E).

The committee amendments allow, in the case of a taxpayer that is a cannabis licensee, a deduction in an amount equal to any expenditure that would qualify as a specified research or experimental expenditure pursuant to section 174 of the Internal Revenue Code but is disallowed as a deduction for federal tax purposes because cannabis is a controlled substance under federal law. In addition, the committee amendments allow any expenditure that is claimed as such a deduction to also be claimed as a qualified research expense for purposes of the credit allowed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24).

The committee amendments make technical changes to a citation to section 280E of the Internal Revenue Code (26 U.S.C. s.280E) and to the definition of "licensee" to provide that a licensee means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33). The committee amendments add this definition to section 3 of the bill.

The committee amendments clarify that the provisions of section 3 of the bill are to only apply to cannabis licensees.

The committee amendments revise the effective date of the bill to provide that the bill is to take effect immediately and apply to taxable years beginning on and after January 1, 2023.

#### FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill will result in an indeterminate annual State revenue loss for the State. The OLS notes that the bill may help generate more economic activity by cannabis businesses. Therefore, the State and local governments that tax cannabis businesses may indirectly realize an indeterminate amount of additional annual revenue.

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

**ASSEMBLY, No. 3946**

## **STATE OF NEW JERSEY 220th LEGISLATURE**

DATED: OCTOBER 7, 2022

### **SUMMARY**

- Synopsis:** Decouples State tax provisions from federal prohibition on cannabis business deductions.
- Type of Impact:** Annual State revenue loss for the General Fund and Property Tax Relief Fund.
- Agencies Affected:** Division of Taxation in the Department of the Treasury.

#### **Office of Legislative Services Estimate**

| <b>Fiscal Impact</b>      | <b><u>Annual</u></b> |
|---------------------------|----------------------|
| <b>State Revenue Loss</b> | Indeterminate        |

- The Office of Legislative Services (OLS) estimates that this bill will result in an indeterminate annual loss of revenue for the State. The OLS does not have sufficient data on the business expenses and other characteristics of cannabis businesses in New Jersey to quantify the fiscal impact of this bill.
- The OLS notes that the bill may help generate more economic activity by cannabis businesses. Therefore, the State and local governments that tax cannabis businesses might indirectly realize an indeterminate amount of additional annual revenue.

### **BILL DESCRIPTION**

This bill decouples the corporation business tax from the federal income tax provision that prohibits deductions and credits for cannabis businesses. The bill also decouples the S corporation income under the gross income tax from the federal provision.

### **FISCAL ANALYSIS**

#### ***EXECUTIVE BRANCH***

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The OLS estimates that this bill will result in an indeterminate annual loss of revenue to the State General Fund and Property Tax Relief Fund as a result of cannabis businesses claiming tax credits and deductions for which they become eligible. The OLS does not have sufficient data on the business expenses and other characteristics of cannabis businesses in New Jersey to quantify the fiscal impact of this bill. Furthermore, the OLS notes that the legal adult-use cannabis industry in New Jersey is immature at the time of this writing, having only begun sales at limited locations in April of this year. The industry may significantly grow or change in unpredictable ways over the coming years, casting uncertainty over any fiscal estimate.

The OLS notes that providing access to these deductions and credits may also help generate more economic activity by cannabis businesses. Therefore, the State and local governments that tax cannabis businesses might indirectly realize an indeterminate amount of additional annual revenue.

*Section: Revenue, Finance, and Appropriations*  
*Analyst: David Drescher*  
*Section Chief*  
*Approved: Thomas Koenig*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

**ASSEMBLY, No. 3946**

**STATE OF NEW JERSEY  
220th LEGISLATURE**

DATED: MARCH 2, 2023

## SUMMARY

- Synopsis:** Decouples State tax provisions from federal prohibitions on cannabis business deductions.
- Type of Impact:** Annual State revenue loss for the General Fund and Property Tax Relief Fund.
- Agencies Affected:** Division of Taxation in the Department of the Treasury.

### Office of Legislative Services Estimate

| <b>Fiscal Impact</b>      | <b><u>Annual</u></b> |
|---------------------------|----------------------|
| <b>State Revenue Loss</b> | Indeterminate        |

- The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate annual loss of State revenues. The OLS does not have sufficient data on the business expenses and other characteristics of cannabis businesses in New Jersey to quantify the fiscal impact of this bill.
- Decoupling the corporation business tax and gross income tax from current federal statutory provisions that prohibit tax credits and deductions for cannabis businesses will allow these taxpayers to claim tax credits for which they are not eligible under current law.
- The OLS notes that six percent of any revenue loss from the corporation business tax under the bill would also impact resources dedicated by the State Constitution for certain environmental mitigation, preservation, and remediation programs.

## BILL DESCRIPTION

The bill decouples the corporation business tax from the federal income tax provision that prohibits deductions and credits for cannabis businesses. The bill also decouples S corporation income for these businesses under the gross income tax from the federal provision.

The bill also allows, in the case of a taxpayer that is a cannabis licensee, a deduction in an amount equal to any expenditure that would qualify as a specified research or experimental expenditure pursuant to section 174 of the Internal Revenue Code (26 U.S.C. 174) but is disallowed as a deduction for federal tax purposes because cannabis is a controlled substance under federal law. The bill allows any expenditure that is claimed as such a deduction to also be claimed as a qualified research expense for purposes of the research and development tax credit allowed under the State's corporation business tax.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the bill will result in an indeterminate, annual loss of State revenue to the State General Fund and Property Tax Relief Fund. The bill allows cannabis businesses to claim tax credits and deductions for which they become newly eligible. Application of these tax credits and deductions will result in a lower amount of income that is subject to taxation and, in turn, reduce State revenue collections. The OLS does not have sufficient data on the business expenses and other characteristics of cannabis businesses in New Jersey to quantify the fiscal impact of this bill. The OLS notes that six percent of any revenue loss from the corporation business tax will also impact resources dedicated by the State Constitution for certain environmental mitigation, preservation, and remediation programs.

*Decoupling from Section 280E of the Internal Revenue Code.* Under the State's corporation business tax, and for S corporation income under the gross income tax, the starting point for calculating income that is taxable by New Jersey is that which is taxable under the federal income tax. Federal law (26 U.S.C. s.280E) prohibits deductions and credits for businesses trafficking in federally defined schedule I and II controlled substances, which includes cannabis. Deductions for business expenses are therefore not available to cannabis businesses, which results in a higher federal income tax liability for cannabis businesses than for other businesses with similar amounts of income.

Enactment of the bill will allow businesses subject to the corporation business tax to deduct from income all ordinary and necessary expenses incurred in carrying on a licensed cannabis business. The deduction will also be allowed when calculating S corporation income and will also be allowed for other forms of business income under the gross income tax regardless of total gross receipts.

*Deduction of Specified Research or Experimental Expenditures.* Section 174 of the Internal Revenue Code (26 U.S.C. s.174) allows a taxpayer to amortize and deduct from income specified research or experimental deductions over a period of five or 15 years, as applicable. Federal law defines a "specified research or experimental expenditure" as research or experimental expenditures which are paid or incurred by the taxpayer during a taxable year in connection with their trade or business. Under current federal law, these expenditures may not be deducted by a cannabis business for federal tax purposes because cannabis is a controlled substance. The bill allows a taxpayer that is a cannabis licensee that is subject to the corporation business tax to deduct from entire net income specified research or experimental expenditures that are deducted from income for federal tax purposes.

*Expansion of Research Tax Credit for Cannabis Businesses.* Under current law (see N.J.S.A.54:10A-5.24) a taxpayer may be allowed a credit against their corporation business tax liability in an amount equal to: (1) 10 percent of the excess qualified research expenses for the privilege period over the base amount and (2) 10 percent of the basic research payments for the privilege period. The amount of the credit is calculated based on the provisions of section 41 of the federal Internal Revenue Code (26 U.S.C. s.41).

The bill provides that a taxpayer may claim a corporation business tax credit for specified research or experimental expenditures that are deducted from entire net income, as permitted under the bill. The specified research or experimental expenditures would be considered qualified research expenses for purposes of the tax credit. According to the most recent State of New Jersey Tax Expenditure Report, the Department of the Treasury projected that the current research and development tax credit will cost the State approximately \$367.8 million in Fiscal Year 2023. The OLS does not have any data on the value of specified research or experimental expenditures for which a credit may be claimed and cannot project the amount by which the application of these credits will reduce State revenues.

*Section: Revenue, Finance, & Appropriations*  
*Analyst: Scott A. Brodsky*  
*Staff Fiscal and Budget Analyst*  
*Approved: Thomas Koenig*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# SENATE, No. 340

## STATE OF NEW JERSEY 220th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2022 SESSION

**Sponsored by:**

**Senator TROY SINGLETON**

**District 7 (Burlington)**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**SYNOPSIS**

Decouples State tax provisions from federal prohibition on cannabis business deductions, but only for businesses with less than \$15 million of gross receipts.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning business deductions incurred in carrying on a  
2 cannabis business, amending P.L.1945, c.162 and P.L.1993,  
3 c.173, and supplementing Title 54A of the New Jersey Statutes.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:

7  
8 1. Section 4 of P.L.1945, c.162 (C.54:10A-4) is amended to read  
9 as follows:

10 4. For the purposes of this act, unless the context requires a  
11 different meaning:

12 (a) "Commissioner" or "director" shall mean the Director of the  
13 Division of Taxation of the State Department of the Treasury.

14 (b) "Allocation factor" shall mean the proportionate part of a  
15 taxpayer's net worth or entire net income used to determine a measure  
16 of its tax under this act.

17 (c) "Corporation" shall mean any corporation, joint-stock  
18 company or association and any business conducted by a trustee or  
19 trustees wherein interest or ownership is evidenced by a certificate of  
20 interest or ownership or similar written instrument, any other entity  
21 classified as a corporation for federal income tax purposes, and any  
22 state or federally chartered building and loan association or savings  
23 and loan association.

24 (d) "Net worth" shall mean the aggregate of the values disclosed  
25 by the books of the corporation for (1) issued and outstanding capital  
26 stock, (2) paid-in or capital surplus, (3) earned surplus and undivided  
27 profits, and (4) surplus reserves which can reasonably be expected to  
28 accrue to holders or owners of equitable shares, not including  
29 reasonable valuation reserves, such as reserves for depreciation or  
30 obsolescence or depletion. Notwithstanding the foregoing, net worth  
31 shall not include any deduction for the amount of the excess  
32 depreciation described in paragraph (2) (F) of subsection (k) of this  
33 section. The foregoing aggregate of values shall be reduced by 50%  
34 of the amount disclosed by the books of the corporation for  
35 investment in the capital stock of one or more subsidiaries, which  
36 investment is defined as ownership (1) of at least 80% of the total  
37 combined voting power of all classes of stock of the subsidiary  
38 entitled to vote and (2) of at least 80% of the total number of shares  
39 of all other classes of stock except nonvoting stock which is limited  
40 and preferred as to dividends. In the case of investment in an entity  
41 organized under the laws of a foreign country, the foregoing requisite  
42 degree of ownership shall effect a like reduction of such investment  
43 from the net worth of the taxpayer, if the foreign entity is considered  
44 a corporation for any purpose under the United States federal income  
45 tax laws, such as (but not by way of sole examples) for the purpose

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 of supplying deemed paid foreign tax credits or for the purpose of  
2 status as a controlled foreign corporation. In calculating the net  
3 worth of a taxpayer entitled to reduction for investment in  
4 subsidiaries, the amount of liabilities of the taxpayer shall be reduced  
5 by such proportion of the liabilities as corresponds to the ratio which  
6 the excluded portion of the subsidiary values bears to the total assets  
7 of the taxpayer.

8 In the case of banking corporations which have international  
9 banking facilities as defined in subsection (n), the foregoing  
10 aggregate of values shall also be reduced by retained earnings of the  
11 international banking facility. Retained earnings means the earnings  
12 accumulated over the life of such facility and shall not include the  
13 distributive share of dividends paid and federal income taxes paid or  
14 payable during the tax year.

15 If in the opinion of the director, the corporation's books do not  
16 disclose fair valuations the director may make a reasonable  
17 determination of the net worth which, in his opinion, would reflect  
18 the fair value of the assets, exclusive of subsidiary investments as  
19 defined aforesaid, carried on the books of the corporation, in  
20 accordance with sound accounting principles, and such determination  
21 shall be used as net worth for the purpose of this act.

22 (e) (Deleted by amendment, P.L.1998, c.114.)

23 (f) "Investment company" shall mean any corporation whose  
24 business during the period covered by its report consisted, to the  
25 extent of at least 90% thereof of holding, investing and reinvesting  
26 in stocks, bonds, notes, mortgages, debentures, patents, patent rights  
27 and other securities for its own account, but this shall not include any  
28 corporation which: (1) is a merchant or a dealer of stocks, bonds and  
29 other securities, regularly engaged in buying the same and selling the  
30 same to customers; or (2) had less than 90% of its average gross  
31 assets in New Jersey, at cost, invested in stocks, bonds, debentures,  
32 mortgages, notes, patents, patent rights or other securities or  
33 consisting of cash on deposit during the period covered by its report;  
34 or (3) is a banking corporation, a savings institution, or a financial  
35 business corporation as defined in the Corporation Business Tax Act.

36 (g) "Regulated investment company" shall mean any corporation  
37 which for a period covered by its report, is registered and regulated  
38 under the Investment Company Act of 1940 (54 Stat. 789), as  
39 amended.

40 (h) "Taxpayer" shall mean any corporation, and any partnership  
41 required, or consenting, to report or to pay taxes, interest or penalties  
42 under this act. "Taxpayer" shall not include a partnership that is listed  
43 on a United States national stock exchange.

44 (i) "Fiscal year" shall mean an accounting period ending on any  
45 day other than the last day of December on the basis of which the  
46 taxpayer is required to report for federal income tax purposes.

1 (j) Except as herein provided, "privilege period" shall mean the  
2 calendar or fiscal accounting period for which a tax is payable under  
3 this act.

4 (k) "Entire net income" shall mean total net income from all  
5 sources, whether within or without the United States, and shall  
6 include the gain derived from the employment of capital or labor, or  
7 from both combined, as well as profit gained through a sale or  
8 conversion of capital assets.

9 For the purpose of this act, the amount of a taxpayer's entire net  
10 income shall be deemed prima facie to be equal in amount to the  
11 taxable income, before net operating loss deduction and special  
12 deductions, which the taxpayer is required to report, or, if the  
13 taxpayer is classified as a partnership for federal tax purposes, would  
14 otherwise be required to report, to the United States Treasury  
15 Department for the purpose of computing its federal income tax,  
16 provided however, that in the determination of such entire net  
17 income,

18 (1) Entire net income shall exclude for the periods set forth in  
19 paragraph (2)(F)(i) of this subsection, any amount, except with  
20 respect to qualified mass commuting vehicles as described in section  
21 168(f)(8)(D)(v) of the Internal Revenue Code as in effect  
22 immediately prior to January 1, 1984, which is included in a  
23 taxpayer's federal taxable income solely as a result of an election  
24 made pursuant to the provisions of paragraph (8) of that section.

25 (2) Entire net income shall be determined without the exclusion,  
26 deduction or credit of:

27 (A) The amount of any exemption or credit allowed in any law of  
28 the United States imposing any tax on or measured by the income of  
29 corporations.

30 (B) Any part of any income from dividends or interest on any kind  
31 of stock, securities or indebtedness, except as provided in paragraph  
32 (5) of subsection (k) of this section.

33 (C) Taxes paid or accrued to the United States, a possession or  
34 territory of the United States, a state, a political subdivision thereof,  
35 or the District of Columbia, or to any foreign country, state, province,  
36 territory or subdivision thereof, on or measured by profits or income,  
37 or business presence or business activity, or the tax imposed by this  
38 act, or any tax paid or accrued with respect to subsidiary dividends  
39 excluded from entire net income as provided in paragraph (5) of  
40 subsection (k) of this section.

41 (D) (Deleted by amendment, P.L.1985, c.143.)

42 (E) (Deleted by amendment, P.L.1995, c.418.)

43 (F) (i) The amount by which depreciation reported to the United  
44 States Treasury Department for property placed in service on and  
45 after January 1, 1981, but prior to taxpayer fiscal or calendar  
46 accounting years beginning on and after the effective date of  
47 P.L.1993, c.172, for purposes of computing federal taxable income  
48 in accordance with section 168 of the Internal Revenue Code in effect

1 after December 31, 1980, exceeds the amount of depreciation  
2 determined in accordance with the Internal Revenue Code provisions  
3 in effect prior to January 1, 1981, but only with respect to a taxpayer's  
4 accounting period ending after December 31, 1981; provided,  
5 however, that where a taxpayer's accounting period begins in 1981  
6 and ends in 1982, no modification shall be required with respect to  
7 this paragraph (F) for the report filed for such period with respect to  
8 property placed in service during that part of the accounting period  
9 which occurs in 1981. The provisions of this subparagraph shall not  
10 apply to assets placed in service prior to January 1, 1998 of a gas, gas  
11 and electric, and electric public utility that was subject to the  
12 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998.

13 (ii) For the periods set forth in subparagraph (F)(i) of paragraph  
14 (2) of this subsection, any amount, except with respect to qualified  
15 mass commuting vehicles as described in section 168(f)(8)(D)(v) of  
16 the Internal Revenue Code as in effect immediately prior to January  
17 1, 1984, which the taxpayer claimed as a deduction in computing  
18 federal income tax pursuant to a qualified lease agreement under  
19 paragraph (8) of that section.

20 The director shall promulgate rules and regulations necessary to  
21 carry out the provisions of this section, which rules shall provide,  
22 among others, the manner in which the remaining life of property  
23 shall be reported.

24 (G) (i) The amount of any civil, civil administrative, or criminal  
25 penalty or fine, including a penalty or fine under an administrative  
26 consent order, assessed and collected for a violation of a State or  
27 federal environmental law, an administrative consent order, or an  
28 environmental ordinance or resolution of a local governmental entity,  
29 and any interest earned on the penalty or fine, and any economic  
30 benefits having accrued to the violator as a result of a violation,  
31 which benefits are assessed and recovered in a civil, civil  
32 administrative, or criminal action, or pursuant to an administrative  
33 consent order. The provisions of this paragraph shall not apply to a  
34 penalty or fine assessed or collected for a violation of a State or  
35 federal environmental law, or local environmental ordinance or  
36 resolution, if the penalty or fine was for a violation that resulted from  
37 fire, riot, sabotage, flood, storm event, natural cause, or other act of  
38 God beyond the reasonable control of the violator, or caused by an  
39 act or omission of a person who was outside the reasonable control  
40 of the violator.

41 (ii) The amount of treble damages paid to the Department of  
42 Environmental Protection pursuant to subsection a. of section 7 of  
43 P.L.1976, c.141 (C.58:10-23.11f), for costs incurred by the  
44 department in removing, or arranging for the removal of, an  
45 unauthorized discharge upon failure of the discharger to comply with  
46 a directive from the department to remove, or arrange for the removal  
47 of, the discharge.

1 (H) The amount of any sales and use tax paid by a utility vendor  
2 pursuant to section 71 of P.L.1997, c.162.

3 (I) Interest paid, accrued or incurred for the privilege period to a  
4 related member, as defined in section 5 of P.L.2002, c.40 (C.54:10A-  
5 4.4), except that a deduction shall be permitted to the extent that the  
6 taxpayer establishes by clear and convincing evidence, as determined  
7 by the director, that: (i) a principal purpose of the transaction giving  
8 rise to the payment of the interest was not to avoid taxes otherwise  
9 due under Title 54 of the Revised Statutes or Title 54A of the New  
10 Jersey Statutes, (ii) the interest is paid pursuant to arm's length  
11 contracts at an arm's length rate of interest, and (iii)(aa) the related  
12 member was subject to a tax on its net income or receipts in this State  
13 or another state or possession of the United States or in a foreign  
14 nation, (bb) a measure of the tax includes the interest received from  
15 the related member, and (cc) the rate of tax applied to the interest  
16 received by the related member is equal to or greater than a rate three  
17 percentage points less than the rate of tax applied to taxable interest  
18 by this State pursuant to section 5 of P.L.1945, c.162 (C.54:10A-5).

19 A deduction shall also be permitted if the taxpayer establishes by  
20 clear and convincing evidence, as determined by the director, that the  
21 disallowance of a deduction is unreasonable, or the taxpayer and the  
22 director agree in writing to the application or use of an alternative  
23 method of apportionment under section 8 of P.L.1945, c.162  
24 (C.54:10A-8); nothing in this subsection shall be construed to limit  
25 or negate the director's authority to otherwise enter into agreements  
26 and compromises otherwise allowed by law.

27 A deduction shall also be permitted to the extent that the taxpayer  
28 establishes by a preponderance of the evidence, as determined by the  
29 director, that the interest is directly or indirectly paid, accrued or  
30 incurred to (i) a related member in a foreign nation which has in force  
31 a comprehensive income tax treaty with the United States and the  
32 related member (aa) was subject to tax in the foreign nation on a tax  
33 base that included the payment paid, accrued, or incurred; and (bb)  
34 under which the related member's income received from the  
35 transaction was taxed at an effective tax rate equal to or greater than  
36 a rate of three percentage points less than the rate of tax applied to  
37 taxable interest by the State of New Jersey pursuant to section 5 of  
38 P.L.1945, c.162 (C.54:10A-5), provided however that the taxpayer  
39 shall disclose on its return for the privilege period the name of the  
40 related member, the amount of the interest, the relevant foreign  
41 nation, and such other information as the director may prescribe or  
42 (ii) to an independent lender and the taxpayer guarantees the debt on  
43 which the interest is required. The adjustments required by this  
44 subparagraph shall not apply to transactions between related  
45 members included in a combined group reported on a New Jersey  
46 combined return.

47 (J) (i) Amounts deducted for federal tax purposes pursuant to  
48 section 199 of the federal Internal Revenue Code of 1986, 26 U.S.C.

1 s.199, except that this exclusion shall not apply to amounts deducted  
2 pursuant to that section that are exclusively based upon domestic  
3 production gross receipts of the taxpayer which are derived only from  
4 any lease, rental, license, sale, exchange, or other disposition of  
5 qualifying production property which the taxpayer demonstrates to  
6 the satisfaction of the director was manufactured or produced by the  
7 taxpayer in whole or in significant part within the United States but  
8 not qualified production property that was grown or extracted by the  
9 taxpayer. "Manufactured or produced" as used in this paragraph shall  
10 be limited to performance of an operation or series of operations the  
11 object of which is to place items of tangible personal property in a  
12 form, composition, or character different from that in which they  
13 were acquired. The change in form, composition, or character shall  
14 be a substantial change, and result in a transformation of property  
15 into a different or substantially more usable product.

16 (ii) For privilege periods beginning after December 31, 2017,  
17 notwithstanding the provisions of P.L.1945, c.162 (C.54:10A-  
18 1 et seq.) or any other law to the contrary, for the purposes of  
19 determining the amount of income pursuant to P.L.1945, c.162  
20 (C.54:10A-1 et seq.) that is net of expenses, no amounts shall be  
21 taken as a deduction pursuant to section 199A of the Internal Revenue  
22 Code (26 U.S.C. s.199A).

23 (K) For privilege periods beginning after December 31, 2017, the  
24 interest deduction limitation in subsection (j) of section 163 of the  
25 Internal Revenue Code (26 U.S.C. s.163), shall apply on a pro-rata  
26 basis to interest paid to both related and unrelated parties, regardless  
27 of whether the related parties are subject to the add-back provision  
28 of either subparagraph (I) of paragraph (2) of this subsection or in  
29 section 5 of P.L.2002, c.40 (C.54:10A-4.4).

30 (3) The director may, whenever necessary to properly reflect the  
31 entire net income of any taxpayer, determine the year or period in  
32 which any item of income or deduction shall be included, without  
33 being limited to the method of accounting employed by the taxpayer.

34 (4) There shall be allowed as a deduction from entire net income  
35 of a banking corporation, to the extent not deductible in determining  
36 federal taxable income, the eligible net income of an international  
37 banking facility determined as follows:

38 (A) The eligible net income of an international banking facility  
39 shall be the amount remaining after subtracting from the eligible  
40 gross income the applicable expenses;

41 (B) Eligible gross income shall be the gross income derived by an  
42 international banking facility, which shall include, but not be limited  
43 to, gross income derived from:

44 (i) Making, arranging for, placing or carrying loans to foreign  
45 persons, provided, however, that in the case of a foreign person which  
46 is an individual, or which is a foreign branch of a domestic  
47 corporation (other than a bank), or which is a foreign corporation or  
48 foreign partnership which is controlled by one or more domestic

1 corporations (other than banks), domestic partnerships or resident  
2 individuals, all the proceeds of the loan are for use outside of the  
3 United States;

4 (ii) Making or placing deposits with foreign persons which are  
5 banks or foreign branches of banks (including foreign subsidiaries)  
6 or foreign branches of the taxpayers or with other international  
7 banking facilities;

8 (iii) Entering into foreign exchange trading or hedging  
9 transactions related to any of the transactions described in this  
10 paragraph; or

11 (iv) Such other activities as an international banking facility  
12 may, from time to time, be authorized to engage in;

13 (C) Applicable expenses shall be any expense or other  
14 deductions attributable, directly or indirectly, to the eligible gross  
15 income described in subparagraph (B) of this paragraph.

16 (5) (A) (i) Entire net income shall exclude 100% of dividends  
17 which were included in computing such taxable income for federal  
18 income tax purposes, paid to the taxpayer by one or more subsidiaries  
19 owned by the taxpayer to the extent of the 80% or more ownership  
20 of investment described in subsection (d) of this section for privilege  
21 periods beginning on or before December 31, 2016.

22 (ii) For privilege periods beginning after December 31, 2016 and  
23 before January 1, 2019, entire net income shall exclude 95% of  
24 dividends which were included in computing such taxable income for  
25 federal income tax purposes, paid or deemed paid, to the taxpayer by  
26 one or more subsidiaries owned by the taxpayer to the extent of the  
27 80% or more ownership of investment described in subsection (d) of  
28 this section. For the purposes of calculating the tax liability owed for  
29 the paid or deemed paid dividends included in entire net income by  
30 this subsection, the taxpayer shall use either their three-year average  
31 allocation factor for the taxpayer's 2014 through 2016 tax years  
32 reported on the taxpayer's tax returns or 3.5 percent, whichever is  
33 lower.

34 (iii) For privilege periods beginning on and after January 1, 2019,  
35 entire net income shall exclude 95% of dividends which were  
36 included in computing such taxable income for federal income tax  
37 purposes, paid or deemed paid to the taxpayer by one or more  
38 subsidiaries owned by the taxpayer to the extent of the 80% or more  
39 ownership of investment described in subsection (d) of this section.

40 (B) Entire net income shall exclude 50% of dividends which were  
41 included in computing such taxable income for federal income tax  
42 purposes, paid or deemed paid to the taxpayer by one or more  
43 subsidiaries owned by the taxpayer to the extent of 50% or more  
44 ownership of investment, such ownership of investment calculated in  
45 the same manner as the 80% or more of ownership of investment is  
46 calculated as described in subsection (d) of this section.

47 (C) To the extent a subsidiary received dividends from other  
48 subsidiaries and included those dividends in its entire net income for

1 the purposes of determining its tax liability pursuant to section 5 of  
2 P.L.1945, c.162 (C.54:10A-5) and paid tax on those dividends, the  
3 taxpayer receiving those same dividends from the subsidiary shall  
4 exclude those dividends from its entire net income based on the  
5 subsidiary's allocation factor used by the subsidiary in determining  
6 its tax liability pursuant to section 5 of P.L.1945, c.162 (C.54:10A-  
7 5).

8 (6) (A) Net operating loss deduction. For privilege periods ending  
9 before July 31, 2019, there shall be allowed as a deduction for the  
10 privilege period the net operating loss carryover to that period.

11 (B) Net operating loss carryover. A net operating loss for any  
12 privilege period ending after June 30, 1984 shall be a net operating  
13 loss carryover to each of the seven privilege periods following the  
14 period of the loss and a net operating loss for any privilege period  
15 ending after June 30, 2009 shall be a net operating loss carryover to  
16 each of the twenty privilege periods following the period of the loss.  
17 The entire amount of the net operating loss for any privilege period  
18 (the "loss period") shall be carried to the earliest of the privilege  
19 periods to which the loss may be carried. The portion of the loss  
20 which shall be carried to each of the other privilege periods shall be  
21 the excess, if any, of the amount of the loss over the sum of the entire  
22 net income, computed without the exclusions permitted in paragraphs  
23 (4) and (5) of this subsection or the net operating loss deduction  
24 provided by subparagraph (A) of this paragraph, for each of the prior  
25 privilege periods to which the loss may be carried.

26 (C) Net operating loss. For purposes of this paragraph the term  
27 "net operating loss" means the excess of the deductions over the gross  
28 income used in computing entire net income without the net  
29 operating loss deduction provided for in subparagraph (A) of this  
30 paragraph and the exclusions in paragraphs (4) and (5) of this  
31 subsection.

32 (D) Change in ownership. Where there is a change in 50% or more  
33 of the ownership of a corporation because of redemption or sale of  
34 stock and the corporation changes the trade or business giving rise to  
35 the loss, no net operating loss sustained before the changes may be  
36 carried over to be deducted from income earned after such changes.  
37 In addition where the facts support the premise that the corporation  
38 was acquired under any circumstances for the primary purpose of the  
39 use of its net operating loss carryover, the director may disallow the  
40 carryover.

41 (E) Notwithstanding the provisions of this paragraph (6) of  
42 subsection (k) of this section to the contrary, for privilege periods  
43 beginning during calendar year 2002 and calendar year 2003, no  
44 deduction for any net operating loss carryover shall be allowed and  
45 for privilege periods beginning during calendar year 2004 and  
46 calendar year 2005, there shall be allowed as a deduction for the  
47 privilege period so much of the net operating loss carryover as  
48 reduces entire net income otherwise calculated by 50%. If and only

1 to the extent that any net operating loss carryover deduction is  
2 disallowed by reason of this subparagraph (E), the date on which the  
3 amount of the disallowed net operating loss carryover deduction  
4 would otherwise expire shall be extended by a period equal to the  
5 period for which application of the net operating loss was disallowed  
6 by this subparagraph.

7 Provided, that this subparagraph (E) shall not restrict the surrender  
8 or acquisition of corporation business tax benefit certificates  
9 pursuant to section 1 of P.L.1997, c.334 (C.34:1B-7.42a) and shall  
10 not restrict the application of corporation business tax benefit  
11 certificates pursuant to section 2 of P.L.1997, c.334 (C.54:10A-4.2).

12 (F) Reduction for discharge of indebtedness. A net operating loss  
13 for any privilege period ending after June 30, 2014, and any net  
14 operating loss carryover to such privilege period, shall be reduced by  
15 the amount excluded from federal taxable income under  
16 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of  
17 section 108 of the federal Internal Revenue Code (26 U.S.C. s.108),  
18 for the privilege period of the discharge of indebtedness.

19 (7) The entire net income of gas, electric and gas and electric  
20 public utilities that were subject to, or would have been subject to tax  
21 if doing business in this State, the provisions of P.L.1940, c.5  
22 (C.54:30A-49 et seq.) prior to 1998, shall be adjusted by substituting  
23 the New Jersey depreciation allowance for federal tax depreciation  
24 with respect to assets placed in service prior to January 1, 1998. For  
25 gas, electric, and gas and electric public utilities that were subject to,  
26 or would have been subject to tax if doing business in this State, the  
27 provisions of P.L.1940, c.5 (C.54:30A-49 et seq.) prior to 1998, the  
28 New Jersey depreciation allowance shall be computed as follows: All  
29 depreciable assets placed in service prior to January 1, 1998 shall be  
30 considered a single asset account. The New Jersey tax basis of this  
31 depreciable asset account shall be an amount equal to the carryover  
32 adjusted basis for federal income tax purposes on December 31, 1997  
33 of all depreciable assets in service on December 31, 1997, increased  
34 by the excess, of the "net carrying value," defined to be adjusted book  
35 basis of all assets and liabilities, excluding deferred income taxes,  
36 recorded on the public utility's books of account on December 31,  
37 1997, over the carryover adjusted basis for federal income tax  
38 purposes on December 31, 1997 of all assets and liabilities owned by  
39 the gas, electric, or gas and electric public utility as of December 31,  
40 1997. "Books of account" for gas, gas and electric, and electric public  
41 utilities means the uniform system of accounts as promulgated by the  
42 Federal Energy Regulatory Commission and adopted by the Board of  
43 Public Utilities. The following adjustments to entire net income shall  
44 be made pursuant to this section:

45 (A) Depreciation for property placed in service prior to January 1,  
46 1998 shall be adjusted as follows:

47 (i) Depreciation for federal income tax purposes shall be  
48 disallowed in full.

1 (ii) A deduction shall be allowed for the New Jersey depreciation  
2 allowance. The New Jersey depreciation allowance shall be  
3 computed for the single asset account described above based on the  
4 New Jersey tax basis as adjusted above as if all assets in the single  
5 asset account were first placed in service on January 1, 1998.  
6 Depreciation shall be computed using the straight line method over a  
7 thirty-year life. A full year's depreciation shall be allowed in the  
8 initial tax year. No half-year convention shall apply. The depreciable  
9 basis of the single account shall be reduced by the adjusted federal  
10 tax basis of assets sold, retired, or otherwise disposed of during any  
11 year on which gain or loss is recognized for federal income tax  
12 purposes as described in subparagraph (B) of this paragraph.

13 (B) Gains and losses on sales, retirements and other dispositions  
14 of assets placed in service prior to January 1, 1998 shall be  
15 recognized and reported on the same basis as for federal income tax  
16 purposes.

17 (C) The Director of the Division of Taxation shall promulgate  
18 regulations describing the methodology for allocating the single asset  
19 account in the event that a portion of the utility's operations are  
20 separated, spun-off, transferred to a separate company or otherwise  
21 desegregated.

22 (8) In the case of taxpayers that are gas, electric, gas and electric,  
23 or telecommunications public utilities as defined pursuant to  
24 subsection (q) of this section, the director shall have authority to  
25 promulgate rules and issue guidance correcting distortions and  
26 adjusting timing differences resulting from the adoption of P.L.1997,  
27 c.162 (C.54:10A-5.25 et al.).

28 (9) Notwithstanding paragraph (1) of this subsection, entire net  
29 income shall not include the income derived by a corporation  
30 organized in a foreign country from the international operation of a  
31 ship or ships, or from the international operation of aircraft, if such  
32 income is exempt from federal taxation pursuant to section 883 of the  
33 federal Internal Revenue Code of 1986, 26 U.S.C. s.883.

34 (10) Entire net income shall exclude all income of an alien  
35 corporation the activities of which are limited in this State to  
36 investing or trading in stocks and securities for its own account,  
37 investing or trading in commodities for its own account, or any  
38 combination of those activities, within the meaning of section 864 of  
39 the federal Internal Revenue Code of 1986, 26 U.S.C. s.864, as in  
40 effect on December 31, 1998. Notwithstanding the previous sentence,  
41 if an alien corporation undertakes one or more infrequent,  
42 extraordinary or non-recurring activities, including but not limited to  
43 the sale of tangible property, only the income from such infrequent,  
44 extraordinary or non-recurring activity shall be subject to the tax  
45 imposed pursuant to P.L.1945, c.162 (C.54:10A-1 et seq.), and that  
46 amount of income subject to tax shall be determined without regard  
47 to the allocation to that specific transaction of any general business  
48 expense of the taxpayer and shall be specifically assigned to this State

1 for taxation by this State without regard to section 6 of P.L.1945,  
2 c.162 (C.54:10A-6). For the purposes of this paragraph, "alien  
3 corporation" means a corporation organized under the laws of a  
4 jurisdiction other than the United States or its political subdivisions.

5 (11) No deduction shall be allowed for research and  
6 experimental expenditures, to the extent that those research and  
7 experimental expenditures are qualified research expenses or basic  
8 research payments for which an amount of credit is claimed pursuant  
9 to section 1 of P.L.1993, c.175 (C.54:10A-5.24) unless those research  
10 and experimental expenditures are also used to compute a federal  
11 credit claimed pursuant to section 41 of the federal Internal Revenue  
12 Code of 1986, 26 U.S.C. s.41.

13 (12) (A) Notwithstanding the provisions of subsection (k) of  
14 section 168 of the federal Internal Revenue Code of 1986, 26 U.S.C.  
15 s.168, subsection (b) of section 1400L of the federal Internal Revenue  
16 Code of 1986, 26 U.S.C. s.1400L, or any other federal law, for  
17 property acquired after September 10, 2001, the depreciation  
18 deduction otherwise allowed pursuant to section 167 of the federal  
19 Internal Revenue Code of 1986, 26 U.S.C. s.167, shall be determined  
20 pursuant to the provisions of the federal Internal Revenue Code of  
21 1986 (26 U.S.C. s.1 et seq.) in effect on December 31, 2001.

22 (B) The director shall prescribe the rules and regulations  
23 necessary to carry out the provisions of this paragraph, including,  
24 among others, those for determining the adjusted basis of the  
25 acquired property for the purposes of the Corporation Business Tax  
26 Act (1945), P.L.1945, c.162.

27 (13) (A) Notwithstanding the provisions of section 179 of the  
28 federal Internal Revenue Code of 1986, 26 U.S.C. s.179, for property  
29 placed in service on or after January 1, 2004, the costs that a taxpayer  
30 may otherwise elect to treat as an expense which is not chargeable to  
31 a capital account shall be determined pursuant to the provisions of  
32 the federal Internal Revenue Code of 1986 (26 U.S.C. s.1 et seq.) in  
33 effect on December 31, 2002.

34 (B) The director shall prescribe the rules and regulations  
35 necessary to carry out the provisions of this paragraph, including,  
36 among others, those for determining the adjusted basis of the  
37 acquired property for the purposes of the Corporation Business Tax  
38 Act (1945), P.L.1945, c.162.

39 (14) Notwithstanding the provisions of subsection (i) of section  
40 108 of the federal Internal Revenue Code of 1986 (26 U.S.C. s.108),  
41 for privilege periods beginning after December 31, 2008 and before  
42 January 1, 2011, entire net income shall include the amount of  
43 discharge of indebtedness income excluded for federal income tax  
44 purposes pursuant to subsection (i) of section 108 of the federal  
45 Internal Revenue Code of 1986 (26 U.S.C. s.108), and for privilege  
46 periods beginning on or after January 1, 2014 and before January 1,  
47 2019, entire net income shall exclude the amount of discharge of  
48 indebtedness income included for federal income tax purposes,

1 pursuant to subsection (i) of section 108 of the federal Internal  
2 Revenue Code of 1986 (26 U.S.C. s.108).

3 (15) Entire net income shall exclude the gain or income derived  
4 from the sale or assignment of a tax credit transfer certificate  
5 pursuant to section 7 of P.L.2011, c.149 (C.34:1B-248) and section  
6 10 of P.L.2014, c.63 (C.34:1B-251).

7 (16) (A) There shall be allowed as a deduction an amount  
8 computed in accordance with this paragraph.

9 (B) For purposes of this paragraph, "net deferred tax liability"  
10 means deferred tax liabilities that exceed the deferred tax assets of  
11 the combined group, as computed in accordance with generally  
12 accepted accounting principles, and "net deferred tax asset" means  
13 that deferred tax assets exceed the deferred tax liabilities of the  
14 combined group, as computed in accordance with generally accepted  
15 accounting principles.

16 (C) Only publicly traded companies, including affiliated  
17 corporations participating in the filing of a publicly traded company's  
18 financial statements prepared in accordance with generally accepted  
19 accounting principles, as of the effective date of this paragraph, shall  
20 be eligible for this deduction.

21 (D) If the provisions of sections 18 through 23 of P.L.2018, c.48  
22 (C.54:10A-4.6 to C.54:10A-4.11) result in an aggregate increase to  
23 the members' net deferred tax liability or an aggregate decrease to the  
24 members' net deferred tax asset, or an aggregate change from a net  
25 deferred tax asset to a net deferred tax liability, the combined group  
26 shall be entitled to a deduction, as determined in this paragraph.

27 (E) For 10 years beginning with the combined group's first  
28 privilege period beginning on or after January 1 of the fifth year after  
29 the effective date of P.L.2018, c.48 (C.54:10A-5.41 et al.), a  
30 combined group shall be entitled to a deduction from combined group  
31 entire net income equal to one-tenth of the amount necessary to offset  
32 the increase in the net deferred tax liability or decrease in the net  
33 deferred tax asset, or aggregate change from a net deferred tax asset  
34 to a net deferred tax liability. Such increase in the net deferred tax  
35 liability or decrease in the net deferred tax asset or the aggregate  
36 change from a net deferred tax asset to a net deferred tax liability  
37 shall be computed based on the change that would result from the  
38 imposition of the unitary reporting requirements under sections 1 and  
39 18 through 23 of P.L.2018, c.48 (C.54:10A-5.41 and C.54:10A-4.6  
40 to C.54:10A-4.11) but for the deduction provided under this  
41 paragraph as of the effective date of this paragraph.

42 (F) The deferred tax impact determined in subparagraph (E) of  
43 this paragraph must be converted to the annual Deferred Tax  
44 Deduction amount, as follows:

45 (i) the deferred tax impact determined in subparagraph (E) of this  
46 paragraph shall be divided by the rate determined under section 5 of  
47 P.L.1945, c.162 (C.54:10A-5) at the effective date of P.L.2018, c.48  
48 (C.54:10A-5.41 et al.);

1 (ii) the resulting amount shall be further divided by the New  
2 Jersey unitary business allocation factor that was used by the  
3 combined group in the calculation of the deferred tax assets and  
4 deferred tax liabilities as described in subparagraph (E) of this  
5 paragraph;

6 (iii) the resulting amount represents the total net Deferred Tax  
7 Deduction available over the ten-year period as described in  
8 subparagraph (E) of this paragraph.

9 (G) The deduction calculated under this paragraph shall not be  
10 adjusted as a result of any events happening subsequent to such  
11 calculation, including, but not limited to, any disposition or  
12 abandonment of assets. Such deduction shall be calculated without  
13 regard to the federal tax effect and shall not alter the tax basis of any  
14 asset. If the deduction under this section is greater than combined  
15 group entire net income, any excess deduction shall be carried  
16 forward and applied as a deduction to combined group entire net  
17 income in future privilege periods until fully utilized.

18 (H) Any combined group intending to claim a deduction under  
19 this paragraph shall file a statement with the director on or before  
20 July 1 of the year subsequent to the first privilege period for which a  
21 combined return is required. Such statement shall specify the total  
22 amount of the deduction which the combined group claims on such  
23 form and in such manner as prescribed by the director. No deduction  
24 shall be allowed under this paragraph for any privilege period except  
25 to the extent claimed on such timely filed statement in accordance  
26 with this paragraph.

27 (17) (A) In the case of a taxpayer that is a cannabis licensee,  
28 there shall be allowed as a deduction an amount equal to any  
29 expenditure that is eligible to be claimed as a federal income tax  
30 deduction but is disallowed because cannabis is a controlled  
31 substance under federal law.

32 (B) Subparagraph (A) of this paragraph shall only apply to a  
33 taxpayer with less than \$15,000,000 of gross receipts, as gross  
34 receipts are calculated in accordance with the gross receipts test of  
35 subsection (c) of section 448 of the Internal Revenue Code  
36 (26 U.S.C. s.448), but without regard to the \$25,000,000 maximum  
37 or the adjustment for inflation of that subsection.

38 (C) For purposes of this paragraph, "licensee" means the same as  
39 defined in section 3 of P.L. c. (C. ) (pending before the  
40 Legislature as Assembly Bill No. 21 and Senate Bill No. 21 of 2020).

41 (l) "Real estate investment trust" shall mean any corporation,  
42 trust or association qualifying and electing to be taxed as a real estate  
43 investment trust under federal law.

44 (m) "Financial business corporation" shall mean any corporate  
45 enterprise which is (1) in substantial competition with the business  
46 of national banks and which (2) employs moneyed capital with the  
47 object of making profit by its use as money, through discounting and  
48 negotiating promissory notes, drafts, bills of exchange and other

1 evidences of debt; buying and selling exchange; making of or dealing  
2 in secured or unsecured loans and discounts; dealing in securities and  
3 shares of corporate stock by purchasing and selling such securities  
4 and stock without recourse, solely upon the order and for the account  
5 of customers; or investing and reinvesting in marketable obligations  
6 evidencing indebtedness of any person, copartnership, association or  
7 corporation in the form of bonds, notes or debentures commonly  
8 known as investment securities; or dealing in or underwriting  
9 obligations of the United States, any state or any political subdivision  
10 thereof, or of a corporate instrumentality of any of them. This shall  
11 include, without limitation of the foregoing, business commonly  
12 known as industrial banks, dealers in commercial paper and  
13 acceptances, sales finance, personal finance, small loan and mortgage  
14 financing businesses, as well as any other enterprise employing  
15 moneyed capital coming into competition with the business of  
16 national banks; provided that the holding of bonds, notes, or other  
17 evidences of indebtedness by individual persons not employed or  
18 engaged in the banking or investment business and representing  
19 merely personal investments not made in competition with the  
20 business of national banks, shall not be deemed financial business.  
21 Nor shall "financial business" include national banks, production  
22 credit associations organized under the Farm Credit Act of 1933 or  
23 the Farm Credit Act of 1971, Pub.L.92-181 (12 U.S.C. s.2091 et  
24 seq.), stock and mutual insurance companies duly authorized to  
25 transact business in this State, security brokers or dealers or  
26 investment companies or bankers not employing moneyed capital  
27 coming into competition with the business of national banks, real  
28 estate investment trusts, or any of the following entities organized  
29 under the laws of this State: credit unions, savings banks, savings and  
30 loan and building and loan associations, pawnbrokers, and State  
31 banks and trust companies.

32 (n) "International banking facility" shall mean a set of asset and  
33 liability accounts segregated on the books and records of a depository  
34 institution, United States branch or agency of a foreign bank, or an  
35 Edge or Agreement Corporation that includes only international  
36 banking facility time deposits and international banking facility  
37 extensions of credit as such terms are defined in section 204.8(a)(2)  
38 and section 204.8(a)(3) of Regulation D of the board of governors of  
39 the Federal Reserve System, 12 CFR Part 204, effective December 3,  
40 1981. In the event that the United States enacts a law, or the board  
41 of governors of the Federal Reserve System adopts a regulation  
42 which amends the present definition of international banking facility  
43 or of such facilities' time deposits or extensions of credit, the  
44 Commissioner of Banking and Insurance shall forthwith adopt  
45 regulations defining such terms in the same manner as such terms are  
46 set forth in the laws of the United States or the regulations of the  
47 board of governors of the Federal Reserve System. The regulations

1 of the Commissioner of Banking and Insurance shall thereafter  
2 provide the applicable definitions.

3 (o) "S corporation" means a corporation included in the definition  
4 of an "S corporation" pursuant to section 1361 of the federal Internal  
5 Revenue Code of 1986, 26 U.S.C. s.1361.

6 (p) "New Jersey S corporation" means a corporation that is an S  
7 corporation; which has made a valid election pursuant to section 3 of  
8 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
9 corporation continuously since the effective date of the valid election  
10 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

11 (q) "Public Utility" means "public utility" as defined in R.S.48:2-  
12 13.

13 (r) "Qualified investment partnership" means a partnership under  
14 this act that has more than 10 members or partners with no member  
15 or partner owning more than a 50% interest in the entity and that  
16 derives at least 90% of its gross income from dividends, interest,  
17 payments with respect to securities loans, and gains from the sale or  
18 other disposition of stocks or securities or foreign currencies or  
19 commodities or other similar income (including but not limited to  
20 gains from swaps, options, futures or forward contracts) derived with  
21 respect to its business of investing or trading in those stocks,  
22 securities, currencies or commodities, but "investment partnership"  
23 shall not include a "dealer in securities" within the meaning of section  
24 1236 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.1236.

25 (s) "Savings institution" means a state or federally chartered  
26 building and loan association, savings and loan association, or  
27 savings bank.

28 (t) "Partnership" means an entity classified as a partnership for  
29 federal income tax purposes.

30 (u) "Prior net operating loss conversion carryover" means a net  
31 operating loss incurred in a privilege period ending prior to July 31,  
32 2019 and converted from a pre-allocation net operating loss to a post-  
33 allocation net operating loss as follows:

34 (1) As used in this subsection:

35 "Base year" means the last privilege period ending prior to July  
36 31, 2019.

37 "Base year BAF" means the taxpayer's business allocation factor  
38 as provided in sections 6 through 10 of P.L.1945, c.162 (C.54:10A-6  
39 through C.54:10A-10) for purposes of calculating entire net income  
40 for the base year, as such section was in effect for the last privilege  
41 period ending prior to July 31, 2019.

42 "UNOL" means the unabsorbed portion of net operating loss as  
43 calculated under paragraph (6) of subsection (k) of this section as  
44 such paragraph was in effect for the last privilege period ending prior  
45 to July 31, 2019, that was not deductible in previous privilege periods  
46 and was eligible for carryover on the last day of the base year subject  
47 to the limitations for deduction under such subsection, including any  
48 net operating loss sustained by the taxpayer during the base year.

1 (2) The prior net operating loss conversion carryover shall be  
2 calculated as follows:

3 (A) The taxpayer shall first calculate the tax value of its UNOL  
4 for the base year and for each preceding privilege period for which  
5 there is a UNOL. The value of the UNOL for each privilege period is  
6 equal to the product of (I) the amount of the taxpayer's UNOL for a  
7 privilege period, and (II) the taxpayer's base year BAF. This result  
8 shall equal the taxpayer's prior net operating loss conversion  
9 carryover.

10 (B) The taxpayer shall continue to carry over its prior net  
11 operating loss conversion carryover to offset its allocated entire net  
12 income as provided in sections 6 through 10 of P.L.1945, c.162  
13 (C.54:10A-6 through C.54:10A-10) for privilege periods ending on  
14 and after July 31, 2019. Such carryover periods shall not exceed the  
15 twenty privilege periods following the privilege period of the initial  
16 loss. The entire amount of the prior net operating loss conversion  
17 carryover for any privilege period shall be carried to the earliest of  
18 the privilege periods to which the loss may be carried. The portion  
19 of the prior net operating loss conversion carryover which shall be  
20 carried to each of the other privilege periods shall be the excess, if  
21 any, of the amount of the prior net operating loss conversion  
22 carryover over the sum of the entire net income, computed without  
23 the exclusions permitted in paragraphs (4) and (5) of subsection (k)  
24 of this section allocated to this State.

25 (C) The prior net operating loss conversion carryover computed  
26 under this subsection shall be applied against the entire net income  
27 allocated to this State before the net operating loss carryover  
28 computed under subsection (v) of this section.

29 (v) "Net operating loss deduction" means the amount allowed as  
30 a deduction for the net operating loss carryover to the privilege  
31 period, calculated as follows:

32 (1) Net operating loss carryover. A net operating loss for any  
33 privilege period ending on or after July 31, 2019, shall be a net  
34 operating loss carryover to each of the twenty privilege periods  
35 following the period of the loss. The entire amount of the net  
36 operating loss for any privilege period shall be carried to the earliest  
37 of the privilege periods to which the loss may be carried. The portion  
38 of the loss which shall be carried to each of the other privilege periods  
39 shall be the excess, if any, of the amount of the loss over the sum of  
40 the entire net income, computed without the exclusions permitted in  
41 paragraphs (4) and (5) of subsection (k) of this section allocated to  
42 this State.

43 (2) Net operating loss. For purposes of this paragraph the term  
44 "net operating loss" means the excess of the deductions over the gross  
45 income used in computing entire net income, without regard to any  
46 net operating loss carryover, and computed without the exclusions in  
47 paragraphs (4) and (5) of subsection (k) of this section, allocated to

1 this State pursuant to sections 6 through 10 of P.L.1945, c.162  
2 (C.54:10A-6 through C.54:10A-10).

3 (3) Reduction for discharge of indebtedness. A net operating loss  
4 for any privilege period ending on or after July 31, 2019, and any net  
5 operating loss carryover to such privilege period, shall be reduced by  
6 the amount excluded from federal taxable income under  
7 subparagraph (A), (B), or (C) of paragraph (1) of subsection (a) of  
8 section 108 of the federal Internal Revenue Code, 26 U.S.C. s.108,  
9 for the privilege period of the discharge of indebtedness.

10 (4) A net operating loss carryover shall not include any net  
11 operating loss incurred during any privilege period ending prior to  
12 July 31, 2019.

13 (5) Change in ownership. Where there is a change in 50% or more  
14 of the ownership of a corporation because of redemption or sale of  
15 stock and the corporation changes the trade or business giving rise to  
16 the loss, no net operating loss sustained before the changes may be  
17 carried over to be deducted from income earned after such changes.  
18 In addition, where the facts support the premise that the corporation  
19 was acquired under any circumstances for the primary purpose of the  
20 use of its net operating loss carryover, the director may disallow the  
21 carryover; provided, however, this paragraph shall not apply between  
22 members of a combined group reported on a New Jersey combined  
23 return.

24 (w) "Taxable net income" means entire net income allocated to  
25 this State as calculated pursuant to sections 6 through 8 of P.L.1945,  
26 c.162 (C.54:10A-6 through 54:10A-8) as modified by subtracting any  
27 prior net operating loss conversion carryforward calculated pursuant  
28 to subsection (u) of this section, and any net operating loss calculated  
29 pursuant to subsection (v) of this section.

30 (x) "Affiliated group" means an affiliated group as defined in  
31 section 1504 of the federal Internal Revenue Code, 26 U.S.C. s.1504,  
32 except such affiliated group shall include all domestic corporations  
33 that are commonly owned, directly or indirectly, by any member of  
34 such affiliated group, without regard to whether the affiliated group  
35 includes (1) corporations included in more than one federal  
36 consolidated return, (2) corporations engaged in one or more unitary  
37 businesses, or (3) corporations that are not engaged in a unitary  
38 business with any other member of the affiliated group.

39 (y) "Combinable captive insurance company" means an entity  
40 that is treated as an association taxable as a corporation under the  
41 federal Internal Revenue Code:

42 (1) more than 50% of the voting stock of which is owned or  
43 controlled, directly or indirectly, by a single entity that is treated as  
44 an association taxable as a corporation under the federal Internal  
45 Revenue Code, and not exempt from federal income tax;

46 (2) that is licensed as a captive insurance company under the laws  
47 of this State or another jurisdiction;

1 (3) whose business includes providing, directly and indirectly,  
2 insurance or reinsurance covering the risks of its parent, members of  
3 its affiliated group, or both; and

4 (4) 50% or less of whose gross receipts for the privilege period  
5 consist of premiums from arrangements that constitute insurance for  
6 federal income tax purposes.

7 A combinable captive insurance company shall not be exempt  
8 under section 3 of P.L.1945, c.162 (C.54:10A-3). A captive insurance  
9 company that does not meet the definition of combinable captive  
10 insurance company shall be excluded as provided in subsection k. of  
11 section 18 of P.L.2018, c.48 (C.54:10A-4.6) and shall be exempt  
12 under section 3 of P.L.1945, c.162 (C.54:10A-3).

13 For purposes of this definition:

14 "Affiliated group" shall have the same meaning as that term is  
15 given by section 1504 of the federal Internal Revenue Code,  
16 26 U.S.C. s.1504, except that the term "common parent corporation"  
17 as used in section 1504 of the federal Internal Revenue Code, 26  
18 U.S.C. s.1504, shall mean any person, as defined in section 7701 of  
19 the federal Internal Revenue Code, 26 U.S.C. s.7701, and references  
20 to "at least 80%" in section 1504 of the federal Internal Revenue  
21 Code, 26 U.S.C. s.1504, shall be read as "50% or more." Section 1504  
22 of the federal Internal Revenue Code, 26 U.S.C. s.1504, shall be read  
23 without regard to the exclusions provided for in subsection (b) of that  
24 section.

25 "Gross receipts" includes the amounts included in gross receipts  
26 for purposes of paragraph (15) of subsection (c) of section 501 of the  
27 federal Internal Revenue Code, 26 U.S.C. s.501, except that those  
28 amounts also include all premiums.

29 "Premiums" includes consideration for annuity contracts and  
30 excludes any part of the consideration for insurance, reinsurance, or  
31 annuity contracts that do not provide bona fide insurance,  
32 reinsurance, or annuity benefits.

33 (z) "Combined group" means the group of all companies that  
34 have common ownership and are engaged in a unitary business,  
35 where at least one company is subject to tax under this chapter, and  
36 shall include all business entities, except as provided for under any  
37 section of the Corporation Business Tax Act (1945), P.L.1945, c.162  
38 (C.54:10A-1 et seq.).

39 (aa) "Common ownership" means that more than 50% of the  
40 voting control of each member of a combined group is directly or  
41 indirectly owned by a common owner or owners, either corporate or  
42 non-corporate, whether or not the owner or owners are members of  
43 the combined group. Whether voting control is indirectly owned shall  
44 be determined in accordance with section 318 of the federal Internal  
45 Revenue Code, 26 U.S.C. s.318.

46 (bb) "Group privilege period" means, if two or more members in  
47 the combined group file in the same federal consolidated tax return,  
48 the same income year as that used on the federal consolidated tax

1 return and, in all other cases, the privilege period of the managerial  
2 member.

3 (cc) "Managerial member" means if the combined group has a  
4 common parent corporation and that common parent corporation is a  
5 taxable member, the managerial member shall be the common parent  
6 corporation. In other cases, the combined group shall select a taxable  
7 member as its managerial member or, in the discretion of the director  
8 or upon failure of the combined group to select its managerial  
9 member, the director shall designate a taxable member of the  
10 combined group as managerial member.

11 (dd) "Member" means a business entity that is a part of a  
12 combined group.

13 (ee) "Nontaxable member" means a member that is: (i) not  
14 subject to tax pursuant to the Corporation Business Tax Act (1945),  
15 P.L.1945, c.162 (C.54:10A-1 et seq.) and is not a corporation  
16 exempted from the tax pursuant to section 3 of P.L.1945, c.162  
17 (C.54:10A-3) except for a combinable captive insurance company; or  
18 (ii) a New Jersey S Corporation which does not elect to be included  
19 in the combined group.

20 (ff) "Taxable member" means a member that is subject to tax  
21 pursuant to the Corporation Business Tax Act (1945), P.L.1945,  
22 c.162 (C.54:10A-1 et seq.).

23 (gg) "Unitary business" means a single economic enterprise that  
24 is made up either of separate parts of a single business entity or of a  
25 group of business entities under common ownership that are  
26 sufficiently interdependent, integrated, and interrelated through their  
27 activities so as to provide a synergy and mutual benefit that produces  
28 a sharing or exchange of value among them and a significant flow of  
29 value among the separate parts. "Unitary business" shall be  
30 construed to the broadest extent permitted under the Constitution of  
31 the United States. A business conducted by a partnership which is in  
32 a unitary business with the combined group shall be treated as the  
33 business of the partners that are members of the combined group,  
34 whether the partnership interest is held directly or indirectly through  
35 a series of partnerships, to the extent of a partner's distributive share  
36 of partnership income. The amount of partnership income to be  
37 included in the partner's entire net income shall be determined in  
38 accordance with subsection a. of section 3 of P.L.2001, c.136  
39 (C.54:10A-15.6) or subsection a. of section 4 of P.L.2001, c.136  
40 (C.54:10A-15.7), as applicable. A business conducted directly or  
41 indirectly by one corporation is unitary with that portion of a business  
42 conducted by another corporation through its direct or indirect  
43 interest in a partnership.

44 (cf: P.L.2018, c.131, s.2)

45

46 2. Section 12 of P.L.1993, c.173 (C.54A:5-10) is amended to  
47 read as follows:

1       12. For the purposes of the "New Jersey Gross Income Tax Act,"  
2 N.J.S.54A:1-1 et seq.:

3       "New Jersey S corporation" means a corporation that is an S  
4 corporation; which has made a valid election pursuant to section 3 of  
5 P.L.1993, c.173 (C.54:10A-5.22); and which has been an S  
6 corporation continuously since the effective date of the valid election  
7 made pursuant to section 3 of P.L.1993, c.173 (C.54:10A-5.22).

8       "Pro rata share" means the portion of any items attributable to an  
9 S corporation shareholder for a taxable year determined in the  
10 manner provided in, and subject to any election made under  
11 subsection (a) of section 1377 or subsection (e) of section 1362 of  
12 the federal Internal Revenue Code of 1986, 26 U.S.C. s.1377 and  
13 s.1362.

14       "Pro rata share of S corporation income" means the sum of the  
15 shareholder's proportionate share of:

16       For a New Jersey S corporation, the S corporation income  
17 allocated to this State of all New Jersey S corporations; and the S  
18 corporation income not allocated to this State.

19       "S corporation" means a corporation included in the definition of  
20 an "S corporation" pursuant to section 1361 of the federal Internal  
21 Revenue Code of 1986, 26 U.S.C. s.1361.

22       "S corporation income" means the net of an S corporation's items  
23 of income, loss or deduction taken into account by the shareholder in  
24 the manner provided in section 1366 of the federal Internal Revenue  
25 Code of 1986, 26 U.S.C. s.1366; provided however that:

26       a. S corporation income shall be determined without the  
27 exclusion, deduction or credit of:

28       (1) any dividend exclusion or deduction otherwise allowed  
29 pursuant to paragraph 5 of subsection (k) of section 4 of P.L.1945,  
30 c.162 (C.54:10A-4);

31       (2) taxes paid or accrued to the United States, a possession or  
32 territory of the United States, a state including this State, a political  
33 subdivision thereof, or the District of Columbia on or measured by  
34 profits or income, or business presence or business activity, of the  
35 corporation;

36       (3) any income taxes paid or accrued to the United States, a  
37 possession or territory of the United States, a state including this  
38 State, a political subdivision thereof, or the District of Columbia paid  
39 or accrued by the S corporation on behalf of, or in satisfaction of the  
40 liabilities of, shareholders of the corporation;

41       (4) interest income on obligations of any state other than this  
42 State, or of a political subdivision thereof, or of the federal  
43 government, except as deducted pursuant to subsection b. of this  
44 section; or

45       (5) interest on indebtedness incurred or continued, expenses paid  
46 and incurred to purchase, carry, manage or conserve, and expenses  
47 of collection of the income or gain from obligations the income or

1 gain from which is deductible pursuant to subsection b. of this  
2 definition; and

3 b. S corporation income shall be determined after deduction of:

4 (1) any gains or income derived from obligations which are  
5 referred to in N.J.S.54A:6-14 or from securities which evidence  
6 ownership in a qualified investment fund as defined in section 2 of  
7 P.L.1987, c.310 (C.54A:6-14.1), and any interest excluded from  
8 gross income pursuant to N.J.S.54A:6-14, or distributions excluded  
9 from income pursuant to section 2 of P.L.1987, c.310 (C.54A:6-14.1)  
10 ; and

11 (2) (a) in the case of a taxpayer that is a cannabis licensee, an  
12 amount equal to any expenditure that is eligible to be claimed as a  
13 federal income tax deduction but is disallowed because cannabis is a  
14 controlled substance under federal law;

15 (b) subparagraph (a) of this paragraph shall only apply to a  
16 taxpayer with less than \$15,000,000 of gross receipts, as gross  
17 receipts are calculated in accordance with the gross receipts test of  
18 subsection (c) of section 448 of the Internal Revenue Code  
19 (26 U.S.C. s.448), but without regard to the \$25,000,000 maximum  
20 or the adjustment for inflation of that subsection;

21 (c) for purposes of this paragraph, "licensee" means the same as  
22 defined in section 3 of P.L. c. (C. ) (pending before the  
23 Legislature as Assembly Bill No. 21 and Senate Bill No. 21 of 2020);  
24 and

25 c. The character of any S corporation item taken into account by  
26 a shareholder of an S corporation shall be determined as if such items  
27 were received or incurred by the S corporation and not its  
28 shareholder.

29 "S corporation income allocated to this State" means that portion  
30 of the S corporation income that is allocated to this State by the  
31 allocation factor of the corporation for the fiscal or calendar  
32 accounting period pursuant to sections 6 through 10 of P.L.1945,  
33 c.162 (C.54:10A-6 through 54:10A-10), reduced by any tax imposed  
34 pursuant to paragraph (3) of subsection (c) of section 5 of P.L.1945,  
35 c.162 (C. 54:10A-5).

36 "S corporation income not allocated to this State" means S  
37 corporation income less S corporation income allocated to  
38 this State.

39 (cf: P.L.1993,c.173,s.12)

40

41 3. (New section) New Jersey gross income under subsections b.  
42 and k. of N.J.S.54A:5-1 shall be determined without regard to section  
43 280E of the Internal Revenue Code (26 U.S.C. 280E).

44

45 4. (New section) Notwithstanding the provisions of the  
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-  
47 1 et seq.), to the contrary, the director may adopt, immediately, upon  
48 filing with the Office of Administrative Law, regulations that the

1 director deems necessary to implement the provisions of  
2 P.L. , c. (C. ) (pending before the Legislature as this bill),  
3 which regulations shall be effective for a period not to exceed 360  
4 days from the date of the filing. The director may thereafter amend,  
5 adopt, or readopt the regulations in accordance with the requirements  
6 of P.L.1968, c.410 (C.52:14B-1 et seq.).  
7

8 5. This act shall take effect immediately or upon the enactment  
9 into law of P.L. , c. (C. ) (pending before the Legislature as  
10 Assembly Bill No. 21 and Senate Bill No. 21 of 2020), whichever  
11 occurs later.  
12  
13

14 STATEMENT  
15

16 This bill decouples the corporation business tax from the federal  
17 income tax provision that prohibits deductions and credits for  
18 cannabis businesses. The bill also decouples S corporation income  
19 under the gross income tax from the federal provision. In both  
20 instances, the bill only decouples from the federal provision for  
21 taxpayers with less than \$15 million of gross receipts.

22 Under the State's corporation business tax, and for S corporation  
23 income under the gross income tax, the starting point for calculating  
24 income that is taxable is that which is taxable under the federal  
25 income tax. Federal law (26 U.S.C. s.280E) prohibits deductions and  
26 credits for businesses trafficking in federally defined schedule I and  
27 II controlled substances, which includes cannabis. Deductions for  
28 business expenses are therefore not available to cannabis businesses,  
29 which results in a higher federal income tax liability than other  
30 businesses with similar amounts of income. Because the corporation  
31 business tax is currently linked by State law to federal law in this  
32 respect, cannabis businesses subject to the corporation business tax  
33 would also have a higher tax liability than other businesses with  
34 similar amounts of income. The same is true for S corporation income  
35 under the gross income tax. In contrast, other forms of business  
36 income under the gross income tax are not linked to the federal  
37 provision by State law, but this bill nevertheless includes a provision  
38 to state explicitly that the federal provision does not apply.

39 As a result of enactment of this bill, a business with less than \$15  
40 million of gross receipts and subject to the corporation business tax  
41 will be allowed to deduct from income all ordinary and necessary  
42 business expenses incurred in carrying on a licensed cannabis  
43 business. The deduction will also be allowed when calculating S  
44 corporation income from S corporations with less than \$15 million  
45 of gross receipts, and will continue to be allowed for other forms of  
46 business income under the gross income tax regardless of total gross  
47 receipts.

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

### **SENATE, No. 340**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JANUARY 19, 2023

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 340.

This bill decouples the corporation business tax from the federal income tax provision that prohibits deductions and credits for cannabis businesses. The bill also decouples S corporation income under the gross income tax from the federal provision.

Under the State's corporation business tax, and for S corporation income under the gross income tax, the starting point for calculating income that is taxable is that which is taxable under the federal income tax. Federal law (26 U.S.C. s.280E) prohibits deductions and credits for businesses trafficking in federally defined schedule I and II controlled substances, which includes cannabis. Deductions for business expenses are therefore not available to cannabis businesses, which results in a higher federal income tax liability than other businesses with similar amounts of income. Because the corporation business tax is currently linked by State law to federal law in this respect, cannabis businesses subject to the corporation business tax would also have a higher tax liability than other businesses with similar amounts of income. The same is true for S corporation income under the gross income tax. In contrast, other forms of business income under the gross income tax are not linked to the federal provision by State law, but this bill nevertheless includes a provision to state explicitly that the federal provision does not apply.

As a result of enactment of this bill, a business subject to the corporation business tax will be allowed to deduct from income all ordinary and necessary business expenses incurred in carrying on a licensed cannabis business. The deduction will also be allowed when calculating S corporation income from S corporations, and will continue to be allowed for other forms of business income under the gross income tax regardless of total gross receipts.

This bill was pre-filed for introduction in the 2022-2023 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

As amended and reported by the committee, Senate Bill No. 340 (1R) is identical to Assembly Bill No. 3946 (2R), as also amended and reported by the committee on this date.

COMMITTEE AMENDMENTS:

The committee amended the bill to provide taxpayers that have total gross receipts of greater than \$15 million access to deductions and credits for ordinary and necessary business expenses incurred in carrying on a licensed cannabis business.

The committee amendments provide that, for purposes of determining a cannabis licensee's income under the Corporation Business Tax Act, income is to be determined without regard to section 280E of the Internal Revenue Code (26 U.S.C. s.280E).

The committee amendments allow, in the case of a taxpayer that is a cannabis licensee, a deduction in an amount equal to any expenditure that would qualify as a specified research or experimental expenditure pursuant to section 174 of the Internal Revenue Code but is disallowed as a deduction for federal tax purposes because cannabis is a controlled substance under federal law. In addition, the committee amendments allow any expenditure that is claimed as such a deduction to also be claimed as a qualified research expense for purposes of the credit allowed pursuant to section 1 of P.L.1993, c.175 (C.54:10A-5.24).

The committee amendments make technical changes to a citation to section 280E of the Internal Revenue Code (26 U.S.C. s.280E) as well as to the definition of "licensee" to provide that a licensee means the same as that term is defined in section 3 of P.L.2021, c.16 (C.24:6I-33). The committee amendments add this definition to section 3 of the bill.

The committee amendments clarify that the provisions of section 3 of the bill are to only apply to cannabis licensees.

The committee amendments revise the effective date of the bill to provide that the bill is to take effect immediately and apply to taxable years beginning on and after January 1, 2023.

FISCAL IMPACT:

The Office of Legislative Services (OLS) estimates that this bill will result in an indeterminate annual State revenue loss for the State. The OLS notes that the bill may help generate more economic activity by cannabis businesses. Therefore, the State and local governments that tax cannabis businesses may indirectly realize an indeterminate amount of additional annual revenue.

**LEGISLATIVE FISCAL ESTIMATE**  
**SENATE, No. 340**  
**STATE OF NEW JERSEY**  
**220th LEGISLATURE**

DATED: DECEMBER 16, 2022

**SUMMARY**

- Synopsis:** Decouples State tax provisions from federal prohibition on cannabis business deductions, but only for businesses with less than \$15 million of gross receipts.
- Type of Impact:** Annual State revenue loss for the General Fund and Property Tax Relief Fund.
- Agencies Affected:** Division of Taxation in the Department of the Treasury.

**Office of Legislative Services Estimate**

| <b>Fiscal Impact</b>      | <b><u>Annual</u></b> |
|---------------------------|----------------------|
| <b>State Revenue Loss</b> | Indeterminate        |

- The Office of Legislative Services (OLS) estimates that this bill will result in an indeterminate annual State revenue loss for the State. The OLS does not have sufficient data on how many cannabis businesses will exist in the State in a given year with \$15 million or less in gross receipts, and the OLS cannot predict which deductions and credits the businesses will utilize.
- The OLS notes that the bill may help generate more economic activity by cannabis businesses. Therefore, the State and local governments that tax cannabis businesses may indirectly realize an indeterminate amount of additional annual revenue.

**BILL DESCRIPTION**

This bill decouples the corporation business tax from the federal income tax provision that prohibits deductions and credits for cannabis businesses. The bill also decouples S corporation income under the gross income tax from the federal provision. In both these instances, the decoupling only applies to cannabis businesses with less than \$15 million of gross receipts.

**FISCAL ANALYSIS**

***EXECUTIVE BRANCH***

None received.

**OFFICE OF LEGISLATIVE SERVICES**

The OLS estimates that this bill will result in an indeterminate annual loss of revenue to the State General Fund and Property Tax Relief Fund as a result of cannabis businesses claiming tax credits and deductions for which they become eligible. The OLS cannot quantify the fiscal impact due to lack of data on the business expenses and other characteristics of cannabis businesses in New Jersey and how many cannabis businesses will have \$15 million or less in gross receipts in a given year. Furthermore, the OLS notes that the legal adult-use cannabis industry in New Jersey is immature at the time of this writing, having only begun sales at limited locations in April 2022. The industry may significantly grow or change in unpredictable ways over the coming years, casting uncertainty over any fiscal estimate.

The OLS notes that providing access to these deductions and credits may also help generate more economic activity by cannabis businesses. Therefore, the State and local governments that tax cannabis might indirectly realize an indeterminate amount of additional annual revenue.

*Section: Revenue, Finance, and Appropriations*  
*Analyst: Scott A. Brodsky*  
*Principal Fiscal Analyst*  
*Approved: Thomas Koenig*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

**SENATE, No. 340**

## **STATE OF NEW JERSEY 220th LEGISLATURE**

DATED: MARCH 2, 2023

### SUMMARY

- Synopsis:** Decouples State tax provisions from federal prohibitions on cannabis business deductions.
- Type of Impact:** Annual State revenue loss for the General Fund and Property Tax Relief Fund.
- Agencies Affected:** Division of Taxation in the Department of the Treasury.

#### Office of Legislative Services Estimate

| <b>Fiscal Impact</b>      | <b><u>Annual</u></b> |
|---------------------------|----------------------|
| <b>State Revenue Loss</b> | Indeterminate        |

- The Office of Legislative Services (OLS) concludes that the bill will result in an indeterminate annual loss of State revenues. The OLS does not have sufficient data on the business expenses and other characteristics of cannabis businesses in New Jersey to quantify the fiscal impact of this bill.
- Decoupling the corporation business tax and gross income tax from current federal statutory provisions that prohibit tax credits and deductions for cannabis businesses will allow these taxpayers to claim tax credits for which they are not eligible under current law.
- The OLS notes that six percent of any revenue loss from the corporation business tax under the bill would also impact resources dedicated by the State Constitution for certain environmental mitigation, preservation, and remediation programs.

### BILL DESCRIPTION

The bill decouples the corporation business tax from the federal income tax provision that prohibits deductions and credits for cannabis businesses. The bill also decouples S corporation income for these businesses under the gross income tax from the federal provision.

The bill also allows, in the case of a taxpayer that is a cannabis licensee, a deduction in an amount equal to any expenditure that would qualify as a specified research or experimental expenditure pursuant to section 174 of the Internal Revenue Code (26 U.S.C. 174) but is disallowed as a deduction for federal tax purposes because cannabis is a controlled substance under federal law. The bill allows any expenditure that is claimed as such a deduction to also be claimed as a qualified research expense for purposes of the research and development tax credit allowed under the State's corporation business tax.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

The OLS concludes that the bill will result in an indeterminate, annual loss of State revenue to the State General Fund and Property Tax Relief Fund. The bill allows cannabis businesses to claim tax credits and deductions for which they become newly eligible. Application of these tax credits and deductions will result in a lower amount of income that is subject to taxation and, in turn, reduce State revenue collections. The OLS does not have sufficient data on the business expenses and other characteristics of cannabis businesses in New Jersey to quantify the fiscal impact of this bill. The OLS notes that six percent of any revenue loss from the corporation business tax will also impact resources dedicated by the State Constitution for certain environmental mitigation, preservation, and remediation programs.

*Decoupling from Section 280E of the Internal Revenue Code.* Under the State's corporation business tax, and for S corporation income under the gross income tax, the starting point for calculating income that is taxable by New Jersey is that which is taxable under the federal income tax. Federal law (26 U.S.C. s.280E) prohibits deductions and credits for businesses trafficking in federally defined schedule I and II controlled substances, which includes cannabis. Deductions for business expenses are therefore not available to cannabis businesses, which results in a higher federal income tax liability for cannabis businesses than for other businesses with similar amounts of income.

Enactment of the bill will allow businesses subject to the corporation business tax to deduct from income all ordinary and necessary expenses incurred in carrying on a licensed cannabis business. The deduction will also be allowed when calculating S corporation income and will also be allowed for other forms of business income under the gross income tax regardless of total gross receipts.

*Deduction of Specified Research or Experimental Expenditures.* Section 174 of the Internal Revenue Code (26 U.S.C. s.174) allows a taxpayer to amortize and deduct from income specified research or experimental deductions over a period of five or 15 years, as applicable. Federal law defines a "specified research or experimental expenditure" as research or experimental expenditures which are paid or incurred by the taxpayer during a taxable year in connection with their trade or business. Under current federal law, these expenditures may not be deducted by a cannabis business for federal tax purposes because cannabis is a controlled substance. The bill

allows a taxpayer that is a cannabis licensee that is subject to the corporation business tax to deduct from entire net income specified research or experimental expenditures that are deducted from income for federal tax purposes.

*Expansion of Research Tax Credit for Cannabis Businesses.* Under current law (see N.J.S.A.54:10A-5.24) a taxpayer may be allowed a credit against their corporation business tax liability in an amount equal to: (1) 10 percent of the excess qualified research expenses for the privilege period over the base amount and (2) 10 percent of the basic research payments for the privilege period. The amount of the credit is calculated based on the provisions of section 41 of the federal Internal Revenue Code (26 U.S.C. s.41).

The bill provides that a taxpayer may claim a corporation business tax credit for specified research or experimental expenditures that are deducted from entire net income, as permitted under the bill. The specified research or experimental expenditures would be considered qualified research expenses for purposes of the tax credit. According to the most recent State of New Jersey Tax Expenditure Report, the Department of the Treasury projected that the current research and development tax credit will cost the State approximately \$367.8 million in Fiscal Year 2023. The OLS does not have any data on the value of specified research or experimental expenditures for which a credit may be claimed and cannot project the amount by which the application of these credits will reduce State revenues.

*Section: Revenue, Finance, & Appropriations*  
*Analyst: Scott A. Brodsky*  
*Staff Fiscal and Budget Analyst*  
*Approved: Thomas Koenig*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).

# Governor Murphy Takes Action on Legislation

05/8/2023

**TRENTON** – Today, Governor Murphy signed the following bills into law:

**S-142/A-4341 (Diegnan, Pou/Freiman, Moriarty, Mosquera)** - Modernizes business filing statutes to include entity conversion and domestication

**S-435/A-392 (Smith, Greenstein/Danielsen)** - Authorizes certain local authorities to distribute live recordings of certain public hearings in lieu of transcript requirement

**S-660/A-2438 (Oroho, Gopal/Wirths, DeAngelo, Space)** - Establishes that "100 percent Disabled Veterans" are not required to submit to MVC certain documentation to renew park privileges

**S-1033/A-2682 (Vitale, Ruiz/Mukherji, Benson, McKnight)** - Establishes "Alzheimer's and Dementia Care Long-Term Advisory Commission" in DHS

**S-2396/A-3810 (Madden, Zwicker/Moen, Mosquera, Danielsen)** - Provides for oversight and improvement of administration of unemployment compensation

**S-2423/A-3746 (Pou/McKeon, Calabrese)** - Allows local government deferred compensation plans to invest in collective investment trusts

**A-179/S-752 (Carter, Moen, Sumter/Lagana, Greenstein)** - Requires DEP to make certain information regarding water purveyors available on its Internet website

**A-1463/S-1810 (Lopez, Speight, McKnight/Ruiz, Singleton)** - Clarifies penalties for certain violations of pretrial release; directs prosecutor to provide written notice of release to v

**A-1791/S-3306 (DeAngelo, Verrelli, McKnight/Turner, Greenstein)** - Establishes "Career and Technical Education Scholar Awards" to annually recognize outstanding career and technical education students

**A-3494/S-2381 (Dancer, Moriarty, Haider/Diegnan)** - Allows license plate frame to obscure certain parts of permanent or temporary license plate under certain conditions

**A-3946/S-340 (Quijano, Calabrese, Carter/Singleton, Turner)** - Decouples State tax provisions from federal prohibition on cannabis business deductions

**A-4132/S-3426 (Stanley, Jaffer, Atkins/Cruz-Perez, Turner)** - Establishes NJ Agricultural Literacy Week

**A-4184/S-2827 (Tully/Greenstein, Turner)** - Requires DCA to allow hiring of information technology and cybersecurity professionals pursuant to shared service incentive programs

**ACS for A-4756/S-3262 (Spearman, Wimberly, Reynolds-Jackson/Burgess, Ruiz)** - Requires Division of Children's System of Care to establish training program for employees of emergency shelters for homeless

**A-4836/S-3417 (Speight, Atkins, Wimberly/Greenstein, Stanfield)** - Requires Office of Emergency Management to incorporate into State Emergency Operations Plan framework to address cybersecurity incidents

**A-4935/S-3335 (Benson, Spearman, Haider/Johnson, Diegnan)** - Concerns electronic transmission of crash reports

Governor Murphy conditionally vetoed the following bill:

**S-3110/A-4783 (Smith, Codey/McKeon, Kennedy, Chaparro) - CONDITIONAL** - Requires sellers of real property and landlords to make certain notifications regarding flooding